

CR 2016/8 - Income tax: the Peter MacCallum Cancer Centre relocation to Parkville Early Retirement Scheme 2016



This cover sheet is provided for information only. It does not form part of *CR 2016/8 - Income tax: the Peter MacCallum Cancer Centre relocation to Parkville Early Retirement Scheme 2016*



Class Ruling

Income tax: the Peter MacCallum Cancer Centre relocation to Parkville Early Retirement Scheme 2016

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	32
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	35
Appendix 2:	
<i>Detailed contents list</i>	53

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 provisions identified below apply to the defined class of entities, who take part in the early retirement 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 entities to whom this Ruling applies is those employees of the Peter MacCallum Cancer Centre, shown at paragraph 15, subject to paragraph 16, who receive a payment under the scheme described in paragraphs 9 to 30 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 under the heading *Scheme*.
6. If the scheme actually carried out is materially different from the scheme that is described in the 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
 - the Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 3 February 2016 to 31 December 2016. The Ruling continues to apply after 31 December 2016 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

8. Peter MacCallum Cancer Centre is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.
9. The scheme will be titled '*Peter MacCallum Cancer Centre relocation to Parkville Early Retirement Scheme 2016*', hereafter referred to as the Scheme.
10. The Victorian Comprehensive Cancer Centre (VCCC) Project is delivering a new \$1 billion facility purpose-built for cancer research, treatment, education and care in the Melbourne suburb of Parkville, Victoria.
11. The VCCC Project is being delivered as a public-private partnership (PPP) under the State Government's Partnerships Victoria policy.
12. From mid-2016 Peter MacCallum Cancer Centre will move its East Melbourne operations to Parkville.

13. The PPP arrangement means that as at 30 June 2016 once the East Melbourne campus of Peter MacCallum Cancer Centre moves to Parkville, the organisation will no longer provide general and apartment cleaning services, security or car park services. This means that the staff in these areas are impacted by the reduction of these functions.

14. Current service requirements for roles that may be considered suitable redeployments in Parkville are being reviewed; therefore, some existing Peter MacCallum Cancer Centre employees may be redeployed. Peter MacCallum Cancer Centre will also be undertaking discussions with other Victorian Public Health Services where it is appropriate to seek redeployment opportunities. However, redeployments cannot be guaranteed by Peter MacCallum Cancer Centre.

15. The class of employees to whom the Scheme applies is staff who are employed in the East Melbourne campus of Peter MacCallum Cancer Centre in the Support Services Administration area in the following roles:

- Cleaners
- Security staff
- Car Park staff
- Repair and Maintenance staff, and
- Support staff.

16. The following employees are specifically excluded from the class and are not eligible to apply under the Scheme:

- Executive Officers or staff on GSERP contracts
- Employees on unpaid leave for the entire duration of the expression of interest period (other than unpaid parental leave)
- Employees with less than six months service with Peter MacCallum Cancer Centre
- Employees engaged on a fixed-term contract
- Casual employees, and
- Employees who are in receipt of Workcover payments.

17. Eligible employees will receive the following payment under the Scheme:

- (a) Four week's 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) An additional two week's pay per completed year of continuous service up to a maximum of fifteen years.

18. The formulation of the payment is based on completed years of service with the Victoria public sector only. For on-going part time employees payments under paragraphs 17(a) and 17(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 under paragraph 17c) above will be a pro-rata payment.

19. All employees whose employment is terminated under the Scheme will receive a payment in lieu of any accrued leave such as annual leave and long service leave in accordance with the relevant enterprise agreement or other industrial instrument. However, these payments will not form part of the payment made under the Scheme.

20. Participation in the Scheme is voluntary.

21. There are no maximum or minimum packages available under the Scheme.

22. The Scheme will operate as follows:

- Peter MacCallum Cancer Centre will call for expressions of interest from eligible employees.
- All eligible employees will then have 14 calendar days to express an interest in applying for a package (expression of interest period).
- Offers will be made by Peter MacCallum Cancer Centre to eligible employees within 21 calendar days after the expression of interest has closed.

23. Where an employee accepts an offer, that employee will retire under the Scheme and terminate their employment at a date negotiated with Peter MacCallum Cancer Centre and by no later than 31 December 2016.

24. Those employees who choose not to participate in the Scheme or who are not offered another role in either Peter MacCallum Cancer Centre or another Victorian Public Health provider will be declared surplus to requirements.

25. Payments made under the Scheme to employees who have not yet reached 65 years at the date of termination will be processed as an early retirement scheme payment.

26. Payments made to employees who are 65 years or older at the date of termination will not be eligible for tax-free base limits under the early retirement scheme. These payments will be concessionally taxed as employment termination payments (ETPs) up to the ETP cap amount.

27. Any employee who terminates employment other than under the proposed Scheme, will not be entitled to receive a payment under the Scheme.

28. The payment made under the Scheme is in excess of any superannuation and any other benefits to which the employee would otherwise be entitled.

29. Payments made under the Scheme will be at arm's length.
30. There is no agreement in place between Peter MacCallum Cancer Centre and another person to employ any employee after retirement under the Scheme.
31. All employees who retire under the Scheme will be subject to a three-year restriction on re-employment in the Victorian public sector.

Ruling

32. The early retirement scheme to be implemented by the Peter MacCallum Cancer Centre is an early retirement scheme for the purposes of section 83-180.
33. Accordingly, so much of the payment received by an eligible employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of voluntary termination of their employment at the time of the retirement will be an early retirement scheme payment.
34. 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

3 February 2016

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.*

35. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83-180(3).

36. 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

37. 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).

38. The class of employees to whom early retirement will be offered is set out in paragraph 15, subject to paragraph 16, of this Ruling.

39. The Commissioner considers that this is an appropriate class of persons for the scheme to be offered to. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the Peter MacCallum Cancer Centre. 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

40. 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).

41. The nature of the rationalisation or re-organisation of the employer's operations is described above under the heading *Scheme*. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force 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).

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

42. The Scheme is proposed to operate for a period from 3 February 2016 to 31 December 2016. The approval to be provided by this class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

43. The Scheme will be in operation for approximately eleven months. This is considered appropriate due to the circumstances of the re-organisation.

Other relevant information

44. 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 their employment at the time of termination is an early retirement scheme payment.

45. 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)).

46. 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'*.

47. In accordance with section 83-170, 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.

48. For the 2015-16 income year, the tax-free amount is limited to \$9,780 (base amount) plus \$4,891 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that six months, eight 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.

49. The total of the amount received on the termination of employment calculated in accordance with paragraphs 17 and 18 of this Ruling may qualify as an early retirement scheme payment.

50. The total payment calculated in accordance with paragraphs 17 and 18 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 48 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

51. Any payment in excess of this limit will be an ETP. The tax-free component of an ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income.

52. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted that the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
Ruling	32
Appendix 1 – Explanation	35
All employees within a class approved by the Commissioner may participate in the scheme	37
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	40
The scheme must be approved by the Commissioner prior to its implementation	42
Other relevant information	44
Appendix 2 – Detailed contents list	53

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- 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
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - ITAA 1997 83-170
 - ITAA 1997 83-180
 - ITAA 1997 960-285
 - ITAA 1997 995-1(1)
 - TAA 1953
-

ATO references

NO: 1-7FM5BPK

ISSN: 2205-5517

ATOlaw topic: Income tax ~~ Assessable income ~~ Employment related
~~ Employment termination payments - early retirement
scheme

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).