

# ***CR 2021/43 - Airservices Australia - early retirement scheme 2021***



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## Class Ruling

### Airservices Australia – early retirement scheme 2021

#### **① Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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#### **What this Ruling is about**

1. This Ruling sets out the tax consequences of an early retirement scheme implemented by Airservices Australia (Airservices).
2. Full details of this scheme are set out in paragraphs 9 to 35 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

#### **Who this Ruling applies to**

4. This Ruling applies to employees of Airservices who receive a payment under this scheme.

#### **When this Ruling applies**

5. This Ruling applies from 8 July 2021 to 30 June 2022.

#### **Ruling**

6. The Airservices Australia – early retirement scheme 2021 (the Scheme) is an early retirement scheme for the purposes of section 83-180.
7. 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.

8. In addition, so much of the Scheme payment as falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

## **Scheme**

9. The following description of the Scheme is based on information provided by the applicant. If the Scheme is not carried out as described, this Ruling cannot be relied upon.

10. The COVID-19 pandemic has resulted in a significant reduction in air traffic movements in Australia and internationally. The reduction in air traffic has had a significant impact on Airservices' financial performance and operations. It is anticipated that the volume of air traffic movements in Australian airspace may not return to pre-pandemic levels until 2025.

11. Airservices is considering the composition and nature of its staffing profile to help it plan for its future needs and is undertaking various measures to reduce and rationalise the size of its workforce.

12. Airservices has identified two cohorts of operational employees who are close to retirement age and are likely to retire before 2025 (that is, before air traffic movements return to pre-pandemic levels).

13. These cohorts are:

- employees working in Air Traffic Control (ATC) and covered by the Airservices Australia (Air Traffic Control and Supporting Air Traffic Services) Enterprise Agreement 2020–2023 (ATC EA) or Airservices Australia (Air Traffic Control Line Manager) Enterprise Agreement 2014 –2017 (ALM EA) (together, the ATC Cohort), and
- employees working in Aviation Rescue and Fire Fighting (ARFF) and covered by the Airservices Australia (Aviation Rescue and Firefighting) Enterprise Agreement 2018–2021 (ARFF EA).

14. Airservices is seeking to operationalise and change the nature of its workforce by using the current decrease in air traffic to retrain and replenish its workforce within these cohorts before air traffic returns to pre-pandemic levels.

15. With respect to the ATC Cohort, a new integrated civil and military air traffic management system (known as CMATS) is expected to be commissioned in or around 2025. This advanced technology will require employees to acquire new skills and abilities to maximise the potential of this new technology.

16. With respect to the ARFF cohort, Airservices has identified that it is comprised of predominantly long-standing employees. Given the physically demanding nature of the work which is inherently required as part of a number of ARFF roles, and consistent with Airservices' objective to change the profile of its workforce, Airservices is seeking to retrain and replenish its workforce while air traffic is substantially reduced.

17. Under the Scheme, Airservices will provide an incentive to employees who are close to retirement to bring forward their retirement. This will enable Airservices to employ, train and develop new people to replace those who have retired by the time air traffic returns to close to pre-pandemic levels. This will allow Airservices to realign the profile of its workforce during a period when air traffic is significantly reduced.

18. The class of employees who will be eligible to participate in the Scheme are those employees who meet all of the following criteria:

- as at the commencement date of the Scheme are permanent employees covered by
  - for the ATC cohort – the ATC EA or the ALM EA
  - for the ARFF cohort – the ARFF EA, and
- are aged 56 years of age or older as at 30 June 2021, and
- will not have reached their pension age (as defined in subsection 23(1) of the *Social Security Act 1991*) as at the date of their retirement.

19. The following employees are specifically excluded from participating in the Scheme:

- employees engaged for a specified term or for a specified task
- casual employees
- employees with a formal written arrangement in place that will result in the termination of their employment on a specified date before 31 December 2022.

20. Following approval of the Scheme, eligible employees will be invited to submit an expression of interest to participate in the Scheme. Employees will have a limited period in which to submit an expression of interest.

21. Airservices will consider the expressions of interest from eligible employees to determine each applicant's retirement date having regard to operational requirements and business needs.

22. Airservices will make a formal offer of early retirement to each eligible employee who expressed interest in retiring under the Scheme. The offer will specify the retirement date on which an employee will retire under the Scheme, if the offer is accepted. Employees will have a limited time to accept or decline the offer to retire under the Scheme.

23. Employees who accept an offer to retire under the Scheme will terminate their employment (through resignation) on their retirement date. Employees will terminate their employment and receive payment by no later than 30 June 2022.

24. Employees who retire under the Scheme will receive a lump sum payment equivalent to the amount of severance pay that the employee would be entitled to under the ATC EA, ALM EA or ARFF EA (whichever is applicable) if they had been made redundant.

25. Employees covered by the ATC EA who accept the offer of an incentive to retire under the Scheme will receive a payment on cessation of their employment comprising:

- a payment equivalent to four weeks' salary for each of the first five completed years of service and three weeks' salary for each subsequent completed year of service, plus a pro rata payment for each completed month of service since the last completed year, to a maximum of 75 weeks' salary, and

- a payment in accordance with the following table

<b>Years of continuous service</b>	<b>Amount payable</b>
Not more than one year	One week's salary
More than one year but not more than two years	Two weeks' salary
More than two years but not more than three years	Three weeks' salary
More than three years but not more than five years	Four weeks' salary
More than five years	Five weeks' salary

26. Employees covered by the ALM EA who accept the offer of an incentive to retire under the Scheme will be entitled to receive a payment on cessation of their employment comprising:

- a payment equivalent to one month's salary for each completed year of service with Airservices or any of its predecessors to a maximum of six months' salary, and
- a payment equivalent to three months' salary.

27. Eligible employees covered by the ARFF EA who accept the offer of an incentive to retire under the Scheme will be entitled to payment on cessation of their employment comprising:

- a payment calculated as follows
  - four weeks' salary per year for the employee's first five years of service, plus
  - three weeks' salary per year of service thereafter, and
  - the payment will be calculated on a pro rata basis for each completed month of service, and
  - the maximum payment is 75 weeks' salary, and
- a payment in accordance with the following table

<b>Years of continuous service</b>	<b>Amount payable</b>
Less than one year of service	One week's salary
Between one and two years of service	Two weeks' salary
Between two and three years of service	Three weeks' salary
Between three and five years of service	Four weeks' salary
More than five years of service	Five weeks' salary

28. Each of the enterprise agreements contains Early Retirement Benefit provisions which are separate and distinct from the operation of the Scheme. Any benefit paid to an employee upon cessation of their employment under an Early Retirement Benefit provision of a relevant enterprise agreement does not form part of the payment made under the Scheme.

29. An employee will not be entitled to receive payment under the Scheme if they cease employment with Airservices for any reason before their retirement date.

30. Employees who terminate employment under the Scheme will receive payment in lieu of their accumulated (but unused) annual leave and long service leave where

applicable. However, these entitlements do not form part of the payment made under the Scheme.

31. The payment made under the Scheme is in addition to and will not be made in lieu of superannuation benefits to which employees would otherwise be entitled.

32. The retirement of employees who receive a payment under the Scheme will occur before they reach pension age.

33. Payments made under the Scheme will be at arm's length.

34. There is no agreement in place between an employee and Airservices, or between Airservices and another person, to employ the employee after the retirement under the Scheme.

35. Participation in the Scheme is voluntary.

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**Commissioner of Taxation**

7 July 2021

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**Appendix – Explanation**

**❶** *This Explanation 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.*

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**Requirements for an early retirement scheme**

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

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 requirements are considered in paragraphs 38 to 47 of this Ruling.

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

38. In order to satisfy the first requirement, participation in a scheme must be offered to all employees in a class approved by the Commissioner.

39. The class of employees eligible to participate in the Scheme is set out in paragraph 18, subject to paragraph 19, of this Ruling.

40. The Commissioner considers that, for the purposes of paragraph 83-180(3)(a), 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 Airservices.

41. Therefore, the first requirement of subsection 83-180(3) is satisfied.

***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***

42. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer as required by paragraph 83-180(3)(b).

43. Paragraphs 10 to 17 of this Ruling describe the nature of the rationalisation or re-organisation of Airservices' operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force of Airservices. It is considered that the Scheme is to be implemented by Airservices with a view to rationalising or re-organising the operations of Airservices for the purposes of paragraph 83-180(3)(b).

44. Accordingly, the second requirement of subsection 83-180(3) has been met.

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

45. The Scheme is proposed to operate for a period from the day after the Commissioner's approval to 30 June 2022.

46. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

47. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

***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 their 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 83-180(6)):

- the retirement occurred before the employee reached pension age 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 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 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

51. 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.

52. 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.

53. For the 2021–22 income year, the tax-free amount is limited to \$11,341 (base amount) plus \$5,672 (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.

54. The total of the amount received on the termination of employment calculated in accordance with paragraphs 25, 26 or 27 of this Ruling may qualify as an early retirement scheme payment.

55. The total payment calculated in accordance with paragraphs 25, 26 and 27, for each respective cohort of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 53 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

56. The tax-free amount will:

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

57. Any payment in excess of this limit will be an ETP and will be split into tax-free and taxable components. 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.

58. 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 but will apply to the payment in lieu of notice.

**References***Previous draft:*

Not previously issued as a draft

- 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)

*Related Rulings/Determinations:*

TR 2006/10

- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- Social Security Act 1991 23(1)

*Legislative references:*

- ITAA 1997
- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170

## ATO references

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