

CR 2021/91 - Victorian Department of Environment, Land, Water and Planning - early retirement scheme 2021-2022



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Status: **legally binding**

Class Ruling

Victorian Department of Environment, Land, Water and Planning – early retirement scheme 2021–2022

❶ 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 income tax consequences of an early retirement scheme implemented by the Victorian Department of Environment, Land, Water and Planning (the Department).
2. Full details of this scheme are set out in paragraphs 9 to 32 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are an employee of the Department who receives a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 9 December 2021 to 31 December 2022.

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Ruling

6. The Department of Environment, Land, Water and Planning early retirement scheme 2021–2022 (hereafter referred to as ‘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 Victorian Government 2021/22 Budget included investments to stimulate the economy, promote economic recovery, create jobs and invest in the implementation of the Victorian Government’s reform agenda.

11. In the context of this changed economic landscape and increased expenditure to fund the health and economic response to the global COVID-19 pandemic, the Victorian Government is taking steps to progressively realign expenditure to target areas of highest priority.

12. As a result, there will be a significant change to the Department’s operations that will necessitate the Department to re-evaluate the size and composition of its workforce. The Department will be required to implement the Scheme to rationalise and re-organise its operations in order to make a significant contribution to the initiatives being carried out by the Victorian Government, including the reduction in the number of employees engaged in the Victorian Public Service (VPS).

13. The Department is required to deliver a range of savings over the 2021–22 to 2024–25 financial years, and ongoing, by implementing a number of initiatives that were approved by the Victorian Government through the 2021/22 Victorian State Budget. This also includes savings initiatives, approved by the Victorian Government’s Expenditure Review Committee, through the Department’s Base and Efficiency Review (BER).

14. The areas of the Department’s businesses that are predominantly impacted by the BER decisions requiring the reduction of workforce-related costs are:

- finance and procurement functions
- communications functions
- human resource functions
- administration and business support functions and processes
- business planning and reporting functions, and
- land services and First People’s Group

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15. The class of employees that are eligible to participate in the Scheme and receive payments under the Scheme are all ongoing non-executive employees of the Department who satisfy the following criteria (subject to the exclusions set out at paragraph 16 of this Ruling):

- are employed in an ongoing role, and
- the majority (more than 50%) of the employee's ongoing role is in one of the following workgroups or functions
 - financial management and reporting branch
 - procurement branch
 - finance operations and grants management branch
 - people and culture division
 - people and culture functions embedded in the Department's groups and regions
 - digital and customer communications division
 - communications functions embedded in the Department's groups and regions, including internal and external communications, project communications, media, social media, web (build, design, content creation and publishing), events, multimedia, graphic design, advertising, marketing, campaigns, speeches, and issues management
 - executive support functions across the Department
 - general administration and business support functions across the Department, excluding finance staff
 - business planning and reporting functions across the Department, except roles that predominantly perform financial reporting, or
 - land services and First People's Group.

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

- employees who have formally resigned in writing prior to the first day of the Scheme's expressions of interest (EOI) period
- employees on unpaid leave for the entire duration of the EOI period, with the exception of those on unpaid parental leave
- employees who are current WorkCover recipients
- employees who are still on probation on the first day of the EOI period
- employees engaged on a fixed-term or casual basis, including those on secondment from other VPS or public sector agencies
- senior executive service employees
- employees under investigation for allegations of misconduct/serious misconduct
- employees who have voluntarily detached from their ongoing position

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- employees who were declared surplus to the Department's requirements prior to 1 July 2021
- employees working in the Department's Customer Contact Centre, and
- employees engaged in any of the following employment programs
 - Victorian Government graduate program
 - Science and Planning graduate program
 - Youth Cadetship Scheme
 - Youth Employment Program
 - Youth Employment Services
 - Barring Djinang VET/TAFE Graduate Program
 - Barring Djinang Internship Program
 - Refugee and Asylum Seeker Internship Program
 - Australian Network on Disability Stepping into Internship Program, or
 - Digital Jobs Internship Program.

17. As soon as practicable following approval of the Scheme, the Department will offer employees within the class the opportunity to retire early. Employees will have a limited time from the date of invitation to submit an EOI. There is a limit on the number of packages available in each workgroup or function.

18. Employees will be notified of the outcome of their EOI and those employees who are made an offer will have a limited time to accept or decline the offer to participate in the Scheme.

19. Where the number of employees seeking to participate in the Scheme exceeds the number of packages available (such that the Scheme is oversubscribed), applications will be processed on the basis of length of continuous service, with those employees with a longer period of service to be given priority. If further required, seniority of classification will be used as a secondary prioritisation criterion with employees with the most-senior grades being given priority.

20. If the number of employees initially willing to participate in the Scheme is less than the number expected by the Department, further EOI processes may be implemented by the Department during the duration of the Scheme.

21. Given the Department's responsibilities in relation to the bushfire and emergency responses across the state, and the key role that many of the Department's employees play in these areas, staff exits under the Scheme will be offered in a series of tranches to ensure that risks to business continuity and the delivery of critical, particular emergency-related, services are appropriately managed.

22. The allocation of the tranches to each participating employee would be based on the employee's role, business continuity considerations and operational requirements. Alternatively, the date of exit may also be determined by mutual agreement between the Department and the participating employee to ensure the maintenance of service delivery and to account for operational requirements.

23. If a workgroup or function is over-subscribed with EOIs, and another workgroup or function is under-subscribed with EOIs, the Department may decrease the number of packages available in the workgroup or function that is under-subscribed and increase the number of packages available in the workgroup or function that is over-subscribed to

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deliver their savings where needed or to be offered in a subsequent EOI round. If a workgroup or function is over-subscribed and an employee rejects an offer, the next employee, as determined by the criteria, will be made an offer within seven calendar days of the rejected offer until the stated quota is filled.

24. Employees who retire under the Scheme will receive:

- (a) a lump sum incentive of up to \$15,000 for a full-time employee
- (b) four weeks' pay (irrespective of the employee's length of service)
- (c) two weeks' pay per each completed year of continuous service, up to a maximum of 15 years, and
- (d) an additional four weeks' pay for employees that are over 54 years of age.

25. For ongoing part-time employees, payments for subparagraphs 24(a) and (b) of this Ruling will be calculated on a pro rata basis. For employees who have a period of part-time employment in the most recent years of continuous service, payment for subparagraph 24(c) of this Ruling will be calculated on a pro rata basis.

26. Employees will receive payment for any accrued statutory entitlements; however, these payments will not form part of the payment under the Scheme.

27. The Scheme payment will not be made in lieu of superannuation benefits.

28. Any employee who terminates employment other than under the Scheme will not be entitled to receive the payment.

29. Employees who retire under the Scheme will do so before they reach the pension age (as defined in the ITAA 1997 by reference to the *Social Security Act 1991*).

30. At the time of retirement, there will be no arrangement between the Department and terminating employees, or between the Department and any other person, for those employees to be employed after retirement.

31. An employee who participates in the Scheme will be restricted from working in the VPS for a period of 12 months.

32. There is no association between the eligible employees and the Department. Accordingly, the employees and the Department will be at arm's length.

Commissioner of Taxation
8 December 2021

Status: **not legally binding**

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

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

34. 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.

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

35. In order to satisfy the first requirement of subsection 83-180(3), a scheme must be offered to all employees in a class approved by the Commissioner.

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

37. 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 the Department.

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

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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

39. 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).

40. Paragraphs 10 to 14 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 work force of the Department. It is considered that the Scheme is to be implemented by the Department with a view to rationalising or re-organising the operations of the Department for the purposes of paragraph 83-180(3)(b).

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

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

42. The Scheme is proposed to operate for a period from 9 December 2021 to 31 December 2022.

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

44. 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

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 their employment at the time of termination 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), (5) and (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)).

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47. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

48. 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.

49. 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.

50. 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.

51. For the 2022–23 income year, the base amount and the service amount are yet to be determined at the date of publication of this Ruling. Therefore, employees should check the ATO website for these indexed amounts at the relevant time.

52. The total of the amount received on the termination of employment calculated in accordance with paragraph 24 of this Ruling will qualify as an early retirement scheme payment.

53. The total payment calculated in accordance with paragraph 24 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 50 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

54. The tax-free amount will not be:

- an employment termination payment (ETP), and
- able to be rolled-over into a super fund.

55. 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.

56. 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.

Status: **not legally binding**

References

Previous draft:

Not previously issued as a draft

Legislative references:

- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170
- 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)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- Social Security Act 1991 23(1)

Other references

- Department of Treasury and Finance
(26 October 2021) [Victorian Budget 2021/22](#)

ATO references

NO: 1-RM17ALZ

ISSN: 2205-5517

BSL: SEO

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

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