



CR 2022/32 - Victorian Department of Health - early retirement scheme 2022-2023

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 This document has changed over time. This is a consolidated version of the ruling which was published on *27 April 2022*



Status: **legally binding**

Class Ruling

Victorian Department of Health – early retirement scheme 2022–2023

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.

Note: This is a consolidated version of this document. Refer to the Legal Database (www.ato.gov.au/Law) to check its currency and to view the details of all changes.

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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 Health (the Department).
2. Full details of this scheme are set out in paragraphs 9 to 29 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 the Department who receive a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 31 March 2022 to 30 June 2023.

Status: **legally binding**

Ruling

6. The Department's Early Retirement Scheme 2022–2023 (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 significant investments to stimulate the economy, promote economic recovery, create jobs and invest in the implementation of the Victorian Government's reform agenda.

11. These investments are made in the context of an overall financial position and outlook severely impacted by the effect on revenue and expenditure due to the global COVID-19 pandemic.

12. As a result, there will be a significant change to the Department's operations that will necessitate the Department re-evaluating the size and composition of its workforce. The Department will be required to implement the Scheme to rationalise and reorganise 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 Scheme will provide an opportunity to re-profile the VPS classifications in the Department while increasing the workforce agility and capability. Through the Scheme, the Department will achieve savings while also taking the opportunity to refresh and re-profile staff to both improve the capability of the Department's workforce, and to prepare for the step up in savings in upcoming years.

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

- employees who have a substantive role with the Department, and
- employees aged between 50 years and the pension age as defined by the *Social Security Act 1991* as at the date of their retirement.

15. Employees that satisfy any of the following criteria, as at the date of the conclusion of the expression of interest (EOI) period, will be specifically excluded from participating in the Scheme:

- employees under 50 years of age during any EOI process
- staff on fixed term contracts
- casual and sessional employees

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- employees on probation
- employees on leave without pay
- employees who are subject to investigation or other formal process for misconduct or allegations of misconduct
- employees who have formally advised the Department of their resignation or retirement on or after the commencement of any EOI process
- employees in receipt of WorkCover payments, and
- employees in the COVID-19 Response Division.

16. As soon as practicable after the Scheme is approved, the Department will invite eligible employees in the class to submit an EOI. Employees will have a limited time to submit an EOI.

17. There is a limit on the number of employees who can retire under the Scheme. If the Scheme is oversubscribed, employees with the longest service will be made offers to retire under the Scheme. Employees will have a limited time to accept or decline the offer. Employees who accept an offer to participate in the Scheme will generally be required to terminate their employment and receive the Scheme payment a short period of time after accepting the offer.

18. However, the date of termination may be extended by mutual agreement between the Department and the employee to ensure the maintenance of service delivery and to account for operational requirements, but will not be later than 30 June 2023.

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

20. The employees who participate in the Scheme will be paid at termination of employment an amount comprising of the following:

- (a) four weeks' pay, irrespective of the employee's length of service
- (b) a lump sum incentive of up to \$15,000 (for a full-time employee)
- (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.

21. The payment, described in paragraph 20 of this Ruling, is calculated based on completed years of service within the Victorian public sector only.

22. For ongoing part-time employees, payments described at (a) and (b) in paragraph 20 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, the payment described at (c) in paragraph 20 of this Ruling will be calculated on a pro rata basis.

23. Participants under the Scheme will also receive applicable accrued statutory entitlements (for example, annual leave and long service leave). Such payments will not form part of the payment under the Scheme.

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

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25. The payments under the Scheme are in addition to and will not be made in lieu of any superannuation benefits.

26. There is no agreement in place between the employee and the Department, or between the Department and another person, to employ any employee after retirement under the Scheme.

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

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

29. Participation in the Scheme is voluntary.

Commissioner of Taxation

30 March 2022

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

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

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.

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

32. 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.

33. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 14, subject to paragraph 15, of this Ruling.

34. 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.

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

Status: **not legally binding**

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

36. 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).

37. Paragraphs 10 to 13 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).

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

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

39. The Scheme is proposed to operate for a period from 31 March 2022 to 30 June 2023.

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

41. 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

42. 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.

43. 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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44. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
45. 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.
46. 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.
47. 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.
48. For the 2022–23 income year, the base amount and the service amount are yet to be determined as at the date of publication of this Ruling. Therefore, employees should check the ATO website for these indexed amounts at the relevant time.
49. The total of the amount received on the termination of employment calculated in accordance with paragraph 20 of this Ruling will qualify as an early retirement scheme payment.
50. The total payment calculated in accordance with paragraph 20 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 47 of this Ruling to determine the tax-free amount of the early retirement scheme payment.
51. The tax-free amount will not be:
- an employment termination payment (ETP), and
 - able to be rolled-over into a super fund.
52. 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.
53. 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**

Reference

Related Rulings/Determinations:

TR 2006/10

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-SJ7H4D3

ISSN: 2205-5517

BSL SEO

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

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