


# ***CR 2024/14 - Victorian Rail Track - early retirement scheme 2024***

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Status: **legally binding**

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## Class Ruling

# Victorian Rail Track – early retirement scheme 2024

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### **🔔 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 Victorian Rail Track (VicTrack).
2. Details of this scheme are set out in paragraphs 9 to 27 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 you if you are a VicTrack employee who receives a payment under this scheme.

### **When this Ruling applies**

5. This Ruling applies from 7 March 2024 until 30 June 2024.

## **Ruling**

6. The VicTrack early retirement scheme 2024 (hereafter referred to as ‘the Scheme’) is an early retirement scheme for the purposes of subsection 83-180(3).

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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

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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. VicTrack is a state-owned entity that owns Victoria's rail land, buildings and infrastructure. Its role is to protect and grow the value of the portfolio to support a thriving transport system and make travel and living better for Victorians.

11. The purpose of the Scheme is to re-organise VicTrack's workforce and business operations following completion of a major project to refresh ageing infrastructure, which will mean less employees are required. The objectives of the Scheme are to facilitate early retirement of employees in the Telecommunications Group of the VicTrack business.

12. VicTrack does not have a policy in place requiring employees to retire before a certain age, and the Scheme would not be an early retirement arrangement that is a part of an employee's ordinary terms and conditions of employment.

13. Further, the purpose of VicTrack's workforce re-organisation is to offer early retirement to employees in a group of its business where changes are occurring and new requirements exist.

14. Eligible employees are currently covered by the *VicTrack Enterprise Agreement 2021 – 2025*.

15. Participation in the Scheme will be voluntary.

16. The class of employees to whom the Scheme applies are employees of the Telecommunications Group only.

17. The Scheme payment will be negotiated with each individual employee but, based on the Victorian Government's *Public Sector Industrial Relations Policies 2015*<sup>1</sup>, would include:

- 4 weeks' salary, irrespective of length of service
- a lump sum payment of up to \$10,000, and
- 2 weeks' salary for each completed year of continuous service at VicTrack (up to a maximum of 15 years).

18. The proposed timeline for the Scheme is:

- Upon the Scheme being approved by the Commissioner, VicTrack will invite all eligible employees to participate in the Scheme, and therefore retire early.

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<sup>1</sup> Department of Economic Development, Jobs, Transport and Resources, Industrial Relations Victoria (2016) [Public Sector Industrial Relations Policies 2015](#), vic.gov.au, accessed 22 February 2024.

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- The eligible employees would be given a period of 1 to 2 weeks to consider whether they wish to accept the Scheme.
- The overall headcount reduction program and employment terminations are expected to be completed by 30 June 2024.

19. There is a limit under the Scheme to 7 eligible employees from each section, with the employee oldest in age taking priority if more than 7 employees apply.

20. VicTrack has not set a maximum number of employees that can access the Scheme within the eligible class of employees.

21. All employees who retire under the Scheme will terminate employment and receive payment by no later than 30 June 2024.

22. Employees who retire under the Scheme would not be entitled to the payment described in paragraph 17 of this Ruling if they had otherwise voluntarily terminated their employment.

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

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

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

26. At the time of retirement, there will be no arrangement between VicTrack and terminating employees, or between VicTrack and any other person, for those employees to be employed after retirement. The *Public Sector Industrial Relations Policies 2015* specifically prohibit employment of anyone accepting a voluntary departure package for a period of 3 years.

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

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**Commissioner of Taxation**

6 March 2024

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Status: **not legally binding**

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## Appendix – Explanation

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**①** *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**

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

29. 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**

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

31. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 16, subject to paragraph 19, of this Ruling.

32. 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.

33. 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***

34. 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).

35. Paragraphs 10 to 15 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 VicTrack. It is considered that the Scheme is to be implemented by VicTrack with a view to rationalising or re-organising the operations of VicTrack for the purposes of paragraph 83-180(3)(b).

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

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

37. The Scheme is proposed to operate for a period from 7 March 2024 to 30 June 2024.

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

39. 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***

40. 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.

41. 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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42. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
43. 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.
44. 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.
45. For the 2023–24 income year, the tax-free amount is limited to \$11,985 (base amount) plus \$5,994 (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.
46. The total of the amount received on the termination of employment calculated in accordance with paragraph 17 of this Ruling will qualify as an early retirement scheme payment.
47. The total payment calculated in accordance with paragraph 17 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 45 of this Ruling to determine the tax-free amount of the early retirement scheme payment.
48. The tax-free amount will not be:
- an employment termination payment (ETP), and
  - able to be rolled-over into a super fund.
49. 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.
50. 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.

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Status: **not legally binding**

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## References

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*Legislative references:*

- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170
- 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)
- Social Security Act 1991 23(1)

*Other references:*

- VicTrack Enterprise Agreement 2021-2025
- Public Sector Industrial Relations Policies 2015

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ATO references

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