


CR 2009/58 - Income tax: early retirement scheme - Queensland State Government

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Class Ruling

Income tax: early retirement scheme – Queensland State Government

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ⓘ 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 provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for entities receiving payment under the scheme. There are many conditions attached to this Ruling and readers should be careful to ensure that these conditions are met before relying on this Ruling.

Relevant provision(s)

3. 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

4. The class of entities to which this Ruling applies is those employees of the Queensland State Government who receive a payment under the scheme described in paragraphs 17 to 20 of this Ruling.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. 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 in paragraphs 10 to 32 of this Ruling.

7. If the scheme actually carried out is materially different from the scheme that is described in this 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
- this Ruling may be withdrawn or modified.

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Date of effect

9. This Ruling applies from 30 September 2009 to 29 September 2010. The Ruling continues to apply after 29 September 2010 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

10. The following description of the scheme is based on information provided by the applicant.

11. On 26 March 2009, the Premier of Queensland announced major changes to the Queensland Government in order to provide better coordination and service delivery to Queenslanders. As part of the changes 23 Queensland government departments will be restructured into 13 departments.

12. The 13 Queensland Government departments are organised around six key areas of government priorities and responsibilities:

- (1) Policy and Fiscal Coordination;
- (2) Employment and Economic Development;
- (3) Environment and Sustainable Resource Management;
- (4) Social Development;
- (5) Law, Justice and Safety; and
- (6) Government Services.

13. The Queensland Government Departments are:

- (1) Department of Communities;
- (2) Department of Community Safety;
- (3) Department of Education and Training;
- (4) Department of Employment, Economic Development and Innovation;
- (5) Department of Environment and Resource Management;
- (6) Department of Health;
- (7) Department of Infrastructure and Planning;
- (8) Department of Justice and Attorney-General;
- (9) Department of Police;
- (10) Department of Public Works;
- (11) Department of the Premier and Cabinet;
- (12) Department of Transport and Main Roads; and
- (13) Department of Treasury.

14. The new departmental arrangements are centred around a set of design principles to deliver:

- (a) efficient and effective services;
- (b) durable and responsive institutional structures;
- (c) responsiveness to changing governmental and strategic priorities; and
- (d) compliance with Executive government conventions and accountability.

15. The Queensland Government will implement a scheme known as the Queensland Public Service Workforce Rejuvenation Scheme (the scheme).

16. The scheme seeks to:

- (a) contribute to the rejuvenation of the Queensland Public Service workforce and the public sector leaders of tomorrow's Queensland;
- (b) create additional employment opportunities for young people at the AO3 and AO4 and equivalent salary levels with the positions to be targeted towards front line service delivery to the public; and
- (c) facilitate the early retirement of high level officers in business support and corporate support roles.

17. The scheme is open to Queensland Government employees who are:

- (a) tenured (permanent) Senior Officers (SO) at levels SO1 and SO2; or
- (b) tenured (permanent) Senior Executive Service (SES) Officers at levels SES1, SES2 and SES3,

in corporate support and business support roles in Queensland Government Departments.

18. Corporate support and business support includes support for the business of the department in the areas of finance, human resources, information management, information technology, assets and facilities, communications, marketing, legals, planning, policy, internal audit, evaluation, review, performance management and reporting and executive administration.

19. The scheme is not open to Deputy Director-Generals, Executive Directors and Directors or equivalent at the tenured SES and Senior Officer level that are:

- leading *Toward Q2: Tomorrow's Queensland* initiatives;
- leading *Coalition of Australian Government (COAG)* initiatives; or
- leading state government service delivery reform initiatives.

20. The scheme is closed to employees aged 65 years and over.
21. In the event that the scheme is over subscribed, employees with a longer length of service would be accepted first.
22. If fewer employees than required accept the offer to retire, the Queensland Government will rely on the natural attrition of tenured SES and Senior Officers in corporate and business support roles.
23. The scheme will be open for 12 months commencing from the date the Commissioner approves the scheme.
24. Eligible employees will have a period of two calendar weeks to accept an offer under the scheme.
25. Eligible employees will terminate employment two weeks after accepting an offer under the scheme.
26. Eligible employees will be offered a payment of:
 - (a) A severance benefit of two weeks pay per year of service and a proportionate amount for an incomplete year of recognised service paid at the officer's substantive appointed level – the minimum is four weeks pay and the maximum is 52 weeks;
 - (b) An incentive payment may be applied to encourage officers to exit the department by a specified date – the payment will be 10 weeks pay at the officer's substantive level; and
 - (c) Accrued recreation and long service leave.
27. Accrued recreation and long service leave payments do not form part of the scheme.
28. Employees who terminate employment on the ordinary termination of employment rather than under the scheme would receive only accrued and unused leave.
29. The payments made under the scheme are to be made at arm's-length.
30. The retirement of employees under the scheme will occur before they turn 65 years of age.
31. The proposed scheme does not include any part of a payment that was paid to the employee in lieu of superannuation benefits to which the employee may have become entitled at the time the payment was made or at a later time.
32. There will be no agreement in place between the employee and the Queensland Government, or the between the Queensland Government and another person, to employ the employee after retirement.

Ruling

33. The early retirement scheme to be implemented by the Queensland State Government is an early retirement scheme for the purposes of section 83-180.

34. Accordingly, so much of the payment received by an employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

35. 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

30 September 2009

Appendix 1 – Explanation

❶ *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.*

36. Where a scheme satisfies the requirements of section 83-180, that scheme will be an 'early retirement scheme'. 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. In order 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 paragraphs 17 to 20 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 employer. 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, that the Commissioner approves.

41. Paragraphs 11 to 16 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's operations. The scheme is to be implemented with a view to rationalising or re-organising the operations or work-force of the employer by making the changes approved by the Commissioner. Accordingly, the second condition for approval has been met.

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

42. The scheme will operate from 30 September 2009 to 29 September 2010. Approval was granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

43. The scheme will be in operation for approximately 12 months, which is within the period considered appropriate by the Commissioner.

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 his or her employment at the time of retirement 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 reaching a certain age or completing a particular period of service (as the case may be);
- if the retirement is not at arm's length 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. From 1 July 2007, 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 2009-10 income year, the tax-free amount is limited to \$7,732 (base limit) plus \$3,867 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. Please note that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation. The base limit and service amount limit will be indexed in line with average weekly ordinary time earnings each income year.

49. The total of the amount received on the termination of employment calculated in accordance with paragraph 26 of this Ruling may qualify as an early retirement scheme payment.

50. The total of the payments in paragraph 49 of this Ruling will be measured against the limit calculated in accordance with paragraph 48 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; and
- not be able to be rolled-over into a superannuation fund.

52. Any payment in excess of this tax-free limit will be an employment termination payment and split up into tax free and taxable components. The tax free component of an employment termination payment includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

53. Employment termination payments made under an approved early retirement scheme cannot be rolled-over into a superannuation fund.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- approved early retirement scheme payments
- employment termination

Legislative references:

- ITAA 1997
- 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)(c)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

ATO references

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