



# ***CR 2011/1 - Income tax: early retirement scheme - Queensland Government Department of Education and Training***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *7 December 2011*



## Class Ruling

### Income tax: early retirement scheme – Queensland Government Department of Education and Training

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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.

**[Note:** *This is a consolidated version of this document. Refer to the ATO Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.*

## 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.

#### **Relevant provision(s)**

2. The relevant provisions dealt with this Ruling are:

- section 83-170 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- section 83-180 of the ITAA 1997

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

## Class of entities

3. The class of entities to which this Ruling applies is those employees of Queensland Government Department of Education and Training who receive a payment under the scheme described in paragraphs 10 to 34 of this Ruling.

## Qualifications

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

5. 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 paragraph 9 to 34 of this Ruling.

6. 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

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8. This Ruling applies from 12 January 2011 to 30 June 2011. The Ruling continues to apply after 30 June 2011 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).

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## Scheme

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9. The following description of the scheme is based on information provided by the applicant.
10. Queensland Government Department of Education and Training (Education Queensland) has lodged an application seeking approval for an early retirement scheme (ERS).
11. The ERS is known as the Career Change Program.
12. Education Queensland is committed to students gaining the best possible educational outcomes. Education Queensland recognises that some longer serving teacher's skills are not of a standard required to deliver quality teaching and that these teachers may no longer be interested in or motivated to update their skills.
13. The purpose of the Career Change Program is to facilitate a significant change in the workforce of Education Queensland. This change is necessary to improve the standard of teachers and skills which in turn will improve the overall quality of education in Queensland.
14. At a macro level the Career Change Program improves educational standards, the quality of student outcomes and Australia's international competitiveness. At a micro level it removes teachers lacking contemporary skills from the system, facilitates their career change and provides opportunities for young highly trained, skilled and motivated teachers.
15. With significant reform currently underway through the Council of Australian Government's (COAG) national agenda including the introduction of a national curriculum and national teachers standards, the teachers accepted under the Career Change Program will be drawn from areas in which there is a requirement for high quality educators. The replacement teachers will have the qualities and commitment required for the satisfaction of Education Queensland's quality teaching agenda.
16. Replacement teachers will be recent graduates and display the highest standard of academic and practical ability with different occupational skills. They will also bring to the education system contemporary teaching techniques, therefore, significantly increasing productivity through the improvement of learning outcomes for Queensland students. This will be particularly important as the National Curriculum, a national initiative agreed to by all Australian jurisdictions through the Ministerial Council on Education, Early Childhood Development and Youth Affairs is implemented in Queensland from 2011.
17. In addition, teachers identified as lacking contemporary teaching skills who do not retire under the scheme will undergo professional development and training in order to improve their skills.
18. Participation in the Career Change Program is entirely voluntary.

19. The Career Change Program is open to all permanent primary teachers with ten or more years of teaching experience that do not have contemporary teaching skills.

20. A teacher will be considered to not have contemporary teaching where the teacher has failed to undertake a significant professional development activity in the past five years. A professional development activity includes a major literacy or numeracy in service scheme or a teaching or education related course at a tertiary institution or TAFE.

21. Education Queensland will identify the teachers who fall into this class during Term 1 of the 2011 school year.

22. There will be a small number of key employees who may fall within the category of employees that Education Queensland is not prepared to allow to retire. These employees may be identified by a combination of one or more of their teaching expertise, level, geographic location and skills.

23. Education Queensland is not willing to include specialist teachers in curriculum areas such as Language other than English (LOTE), maths and science particularly in hard to staff rural and remote areas of the state.

24. Employees must terminate their employment before the earlier of:

- 65; or
- The date of which his or her employment would have necessarily terminated under the terms of employment because of the employee attaining a certain age or completing a certain period of service.

25. There is no minimum number of employees that Education Queensland would like to retire under the Career Change Program.

26. If the Career Change Program is not fully subscribed then Education Queensland may make further offers of early retirement to teachers meeting the selection criteria during Term 2 of the 2011 school year.

27. The number of teachers who can retire under the Career Change Program is limited to 500 and if oversubscribed the teachers who can retire under the Career Change Program will be those with the longest service.

28. Eligible employees will have 14 days to apply for retirement under the Career Change Program.

29. Eligible employees will have 14 days to accept an offer to retire under the Career Change Program.

30. Employees accepted under the Career Change Program will be separated from Education Queensland 7 days after accepting the offer and no later than 14 April 2011, which is the last day of the Term 1.

31. Teachers who retire under the Career Change Program will receive a lump sum payment of \$50,000. A pro-rata payment will apply to part-time teachers.

32. Employees who ordinarily terminate employment rather than accepting an offer under the proposed scheme are entitled to any Cash Equivalent of Long Service Leave and Lump sum on Termination. Lump sum on Termination is the cash equivalent of accrued annual leave and annual leave loading based on a notional entitlement of twenty days per annum.

33. There will not be any agreement between Education Queensland and an employee who accepts an offer of early retirement, or Education Queensland and another party, to employ the employee after the retirement.

34. A draft copy of the information to be given to employees eligible to participate in the proposed scheme and copies of documents which are referred to in the scheme, has been provided to the Australian Taxation Office.

## **Ruling**

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35. The early retirement scheme to be implemented by Queensland Government Department of Education and Training is an early retirement scheme for the purposes of section 83-180.

36. 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.

37. 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.

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**Commissioner of Taxation**

12 January 2011

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## 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.*

38. Where a scheme satisfies the requirements of section 83-180 that scheme will be an 'early retirement scheme'.

39. 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 now considered.

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

40. 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).

41. The class of employees to whom early retirement will be offered is set out in paragraph 19 to 20 of this Ruling.

42. 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. It is therefore considered that 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**

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

44. Paragraphs 12 to 16 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 reasons that the scheme is being implemented. It is considered that the scheme is to be implemented by the employer with a view to rationalising or re-organising the operations of the employer for the purposes of paragraph 83-180(3)(b). Accordingly, the second condition for approval 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 date of the Commissioner's approval to 30 June 2011. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

46. The scheme will be in operation for 7 months. This is considered to be appropriate in this case due to the circumstances of the restructure and for those employees that will be given the option of early retirement under the scheme.

**Other relevant information**

47. Under subsection 83-180(1) so much of the payment received by an employee because the employee retires under an approved 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 the retirement is an early retirement scheme payment.

48. It should be noted that, in order for a payment to qualify as an approved 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 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 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)).

49. 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'.

50. 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.

51. For the 2010-11 income year, the tax-free amount is limited to \$8,126 (base amount) plus \$4,064 (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. In accordance with section 960-285, the base limit and service amount limits will be indexed in line with average weekly ordinary time earnings each income year.

52. The total of the amount received on the termination of employment calculated in accordance with paragraph 31 of the facts may qualify as an early retirement scheme payment.

53. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with formula mentioned above to determine the 'tax-free' amount of the early retirement scheme payment.

54. The 'tax-free' amount will:

- not be an employment termination payment; and
- not be able to be rolled-over into a superannuation fund.

55. Any payment in excess of this 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.

## **Appendix 2 – Detailed contents list**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- early retirement scheme payment
- employment termination payment

*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)(b)
- 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

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ATO references

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