

CR 2012/30 - Income tax: early retirement scheme - Ambulance Victoria

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Class Ruling

Income tax: early retirement scheme – Ambulance Victoria

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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.

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 legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are those employees of Ambulance Victoria who receive a payment under the scheme described in paragraphs 10 to 31 of this Ruling.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in the 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 paragraphs 10 to 31 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

8. This Ruling applies from the date of the Commissioner's approval to 31 December 2012. The Ruling continues to apply after 31 December 2012 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

9. The following description of the scheme is based on information provided by the applicant.
10. Ambulance Victoria (AV) is seeking approval for an early retirement scheme to be known as the Ambulance Victoria Voluntary Departure Package (the Scheme).

11. In March 2008, the Victorian State Government announced that the Metropolitan Ambulance Service, Alexandra District Ambulance Service and Rural Ambulance Victoria would merge to form Ambulance Victoria.

12. The merger took effect on 1 July 2008.

13. Ambulance Victoria has two principle rosters departments in:

- Metropolitan region: based at head office in Doncaster; and
- All Rural regions: based at Belmont, near Geelong.

There are also smaller rostering support satellite operations in:

- Bendigo;
- Ballarat; and
- Alexandra.

14. The AV Board of Directors approved the creation of a state-wide rosters department and relocation of that department to a central location in South Melbourne. This was identified as an organisational priority and included in the AV 2011/12 annual plan.

15. The benefits of operating from a single location include the ability to efficiently and strategically roster all paramedics across Victoria through an improved ability to plan, allocate and optimise resources. The relocation is expected to occur prior to the end of June 2012 but is dependant on the timely completion of building works.

16. For management staff, a single site will facilitate training and development, leave management and succession planning allowing for a cohesive department. This reduces process duplication, improves communication between rosters staff, promotes consistent rostering practices throughout the state and leads to greater efficiency.

17. The Scheme aims to provide an opportunity for AV employees affected by the creation of a state-wide rosters department and relocation of that department to a central location with another alternative should they choose not to pursue redeployment opportunities.

18. The class of employees the Scheme applies to are AV employees affected by the relocation who are under 65 years of age and required to travel more than one hour between their residence and the new work location.

19. The Scheme is based on the Victorian Public Sector Industrial Relations Policy Manual 2010. In addition, AV has accepted that more than one hour travel time may be considered unreasonable. Further, the Australian Industrial Relations Commission agreed with the use of this criteria during the 2005 Enterprise Bargaining Agreement arbitration.

20. All positions within the AV rosters department are still required under the new structure.
21. AV will not prevent any eligible employees from accepting an offer under the Scheme.
22. The date of termination of employment will be negotiated with individual employees to correspond with the relocation.
23. Employees who terminate employment under the Scheme cannot be reemployed by any public service employer for a minimum of three years from the date of their termination of employment.
24. AV and the eligible employees will be dealing with each other at arm's length under the Scheme and there will be no arrangement between AV and the terminating employees, or between AV and any other person, for those employees to be re-employed after retirement.
25. As per the Victorian Public Service Policy Manual 2010, staff members who choose to participate in the proposed scheme will be offered:
- Four weeks pay in lieu of notice; and
 - A voluntary departure incentive of up to \$10,000 (this payment is calculated on the basis of \$2,000 for each year worked up to the maximum of \$10,000).
26. Under normal circumstances termination of employment results in payment of pro-rata accrued annual leave, Accrued Days Off (ADO) and long service leave.
27. The payment made under the Scheme does not include any payment in lieu of superannuation benefits.
28. The Scheme will operate from the date of the Commissioner's approval to 31 December 2012.

Ruling

29. The early retirement scheme to be implemented by Ambulance Victoria is an early retirement scheme for the purposes of section 83-180.
30. 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.

31. 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 Taxation9 May 2012

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.***

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

33. 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

34. 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).

35. The class of employees to whom early retirement will be offered is set out in paragraph 3 of this Ruling.

36. The Commissioner considers that this is an appropriate class of persons to whom the scheme will be offered. 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

37. 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).

38. Paragraph 10 to 17 of this Ruling describes 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 the employer. 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

39. The scheme is proposed to operate for a period from the date of the Commissioner's approval to 31 December 2012. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

40. The scheme will be in operation for approximately three 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

41. 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 the retirement is an early retirement scheme payment.

42. 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 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)).

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. 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 2011-12 income year, the tax-free amount is limited to \$8,435 (base amount) plus \$4,218 (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.

46. The amount in excess of what is received on ordinary termination of employment qualifies as an early retirement scheme payment.

47. The total of the payments in paragraph 25 will be measured against the limit calculated in accordance with formula mentioned in paragraph 45 to determine the 'tax-free' amount of the early retirement scheme payment.

48. The 'tax-free' amount will:

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

49. 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

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

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References

- Previous draft:*
- ITAA 1997 82-135(e)
- Not previously issued as a draft
- ITAA 1997 83-170
 - ITAA 1997 83-180
- Related Rulings/Determinations:*
- TR 2006/10
- 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)
- Subject references:*
- early retirement scheme payment
 - ITAA 1997 83-180(3)(c)
 - ITAA 1997 83-180(5)
 - employment termination payment
 - ITAA 1997 83-180(6)
 - ITAA 1997 995-1(1)
 - TAA 1953
- Legislative references:*
- ITAA 1997
 - ITAA 1997 82-135
 - Copyright Act 1968
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ATO references

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