


# ***CR 2012/69 - Income tax: DBI (Victoria) Voluntary Departure Program 2012-13 Early Retirement Scheme***

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## Class Ruling

### Income tax: DBI (Victoria) Voluntary Departure Program 2012-13 Early Retirement Scheme

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**1 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

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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 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

3. The class of entities to which this Ruling applies is those employees of the Department of Business and Innovation (Victoria) including Film Victoria shown at paragraph 19, who receive a payment under the scheme described in paragraphs 9 to 40 of this Ruling.

## Qualifications

4. 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 9 to 40 of this Ruling.

5. 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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7. This Ruling applies from 5 September 2012 to 31 December 2013. The Ruling continues to apply after 31 December 2013 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**

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8. The following description of the scheme is based on information provided by the applicant.
9. The Victorian Department of Business and Innovation (DBI) is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
10. The scheme will be titled the 'DBI (Victoria) Voluntary Departure Program 2012-13', referred to as the Scheme.
11. As part of the 2011-12 Victorian Budget Update, the Victorian Government introduced efficiency and revenue measures to begin addressing the high growth in expenses and improve the operating result to restore a fiscal buffer against future economic downturns.
12. The efficiency measures are referred to as the Sustainable Government Initiative.
13. These measures target the systemic problems of high growth in expenses and a more moderate revenue outlook.
14. The aim of the measure is to moderate growth in the size of the government and reduce it as a share of the economy, more consistent with its long-term average.
15. DBI is required to reduce its employee numbers as part of its contribution to the 2011-12 Victorian Budget Update efficiency measures. The employee reductions must be completed by 31 December 2013.
16. DBI is currently organised with six divisions working across locations in the CBD, regional, metropolitan, interstate and overseas offices. Film Victoria is a Victorian Public Entity and reports to the DBI.
17. The purpose in implementing the Scheme is to rationalise and re-organise the employer's operations and reduce the number of public servants in non-service delivery and back-office roles to a level that is more in line with historical levels.
18. Offering the Scheme to eligible employees will assist the DBI in the employment reductions.
19. The class of employees to whom the Scheme applies is all ongoing staff employed within the DBI including Film Victoria in specified groups of the following divisions:

Division	Group
Corporate Services and Communications	<ul style="list-style-type: none"> <li>• Finance;</li> <li>• Legal, Audit and Risk;</li> <li>• Information Management &amp; Technology.</li> <li>• Human Resources;</li> <li>• Business Victoria Online;</li> <li>• Business Services;</li> <li>• Strategic Communications;</li> <li>• Office of the Secretary.</li> </ul>
Trade and Industry Development	<ul style="list-style-type: none"> <li>• Office of the Deputy Secretary;</li> <li>• Investment;</li> <li>• International Coordination Office;</li> <li>• Export/Trade;</li> <li>• Industry Development;</li> <li>• Metro/Regional VGBOs;</li> <li>• Program and Small Business.</li> </ul>
Innovation and Technology	<ul style="list-style-type: none"> <li>• Technology Industries;</li> <li>• Science and Technology Programs;</li> <li>• Innovation and Technology Capabilities;</li> <li>• Science and Technology Policy;</li> <li>• Office of the Deputy Secretary;</li> <li>• Film Victoria.</li> </ul>
Investment and Major Projects	<ul style="list-style-type: none"> <li>• Invest Assist;</li> <li>• Melbourne Market Relocation Project.</li> </ul>
Tourism and Aviation	<ul style="list-style-type: none"> <li>• Tourism Victoria;</li> <li>• Marketing;</li> <li>• Strategy and Policy;</li> <li>• Aviation.</li> </ul>
Policy	<ul style="list-style-type: none"> <li>• Policy and Research;</li> <li>• Strategic Planning &amp; Ministerial Services;</li> <li>• Infrastructure;</li> <li>• Regulation Reform.</li> </ul>

20. Participation in the Scheme is entirely voluntary.

21. All eligible employees under the Scheme will be offered a lump sum payment as follows:

- (a) Four weeks' pay in lieu of notice on cessation;
- (b) A lump sum voluntary departure incentive of up to \$10,000 (for a full-time employee); and
- (c) Two weeks' pay per completed year of continuous service in the Victorian Public Sector up to a maximum of 15 years.

22. For part-time employees, payments (a) and (b) will be calculated at the part-time rate. For employees who have a period of part-time employment in the most recent years of continuous service, payment (c) will be a pro-rata payment.

23. Where an employee who is offered a voluntary departure package (VDP) has less than one year's service, they will receive a corresponding fraction of the VDP they would have been paid at one year.

24. The maximum number of packages available under the Scheme is limited.

25. Where the number of employees seeking access to the Scheme exceeds the number of packages available, the offer will be made to those eligible employees who have the longest recognised continuous service in the Victorian Public Sector.

26. The following groups of employees within the DBI divisions will not be eligible to participate in the Scheme:

Division	Group
All DBI	<ul style="list-style-type: none"> <li>• Staff that were Graduate Recruitment and Development Scheme appointees in the past 5 years;</li> <li>• Fixed term and casual staff;</li> <li>• Employees on probation and other trial arrangements;</li> <li>• Employees receiving WorkCover salary payments;</li> <li>• Executive Officers.</li> </ul>
Corporate Services and Communications	<ul style="list-style-type: none"> <li>• Payroll, Operations and Reporting Unit (in HR).</li> </ul>
Innovation and Technology	<ul style="list-style-type: none"> <li>• VPS Grade 6 staff in Workforce Development (Innovation and Technology);</li> <li>• Technology Industries – ICT Investment.</li> </ul>
Investment and Major Projects	<ul style="list-style-type: none"> <li>• Major Projects Victoria.</li> </ul>
Trade and Industry Development	<ul style="list-style-type: none"> <li>• Private Sector Workplace Relations;</li> <li>• Office of the Small Business Commissioner of Victoria.</li> </ul>

27. All employees terminated under the Scheme will receive their accrued annual leave and unused long service leave entitlements in accordance with the relevant enterprise agreement. However, they do not form part of the payment made under the Scheme.

28. Following approval of the Scheme, all eligible employees will be invited to express an interest in the Scheme within three weeks of the Scheme opening.

29. The actual date of termination will be determined by the relevant Deputy Secretary and a written quotation will be developed within four weeks based on this departure date but no later than 31 December 2013.

30. Employees will have one week to accept the offer.

31. All employees who accept the offer to retire under the Scheme will terminate employment and receive the payment from the date after the Commissioner's approval through to 31 December 2013.

32. It is anticipated that the majority of employees will have a departure date four weeks after accepting the formal offer. However, under special circumstances based on organisational requirements and managerial discretion, the departure date in the formal offer may be up to 31 December 2013.

33. It is proposed the Scheme will be implemented from the date after the Commissioner's approval to 31 December 2013.

34. The payments made under the Scheme do not include any payment in lieu of superannuation benefits.
35. The payments made under the Scheme will be at arm's length.
36. Recipients of the Scheme are required to agree not to seek or accept re-employment or any other fee for service:
- from any Victorian Public Service employer, Film Victoria, the Growth Areas Authority, Public Transport Victoria, or VicRoads, for a minimum period of three calendar years from the date of their separation; and
  - from any Victorian Public Sector employer, other than those identified above, for a minimum period of one calendar year from the date of their separation.
37. However, recipients of the Scheme can seek re-employment at any time in the following roles which are outside of the restrictions:
- police officer;
  - protective services officer;
  - fire-fighter; or
  - project fire-fighter.
38. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.
39. Staff aged 65 and older will be eligible to participate in the Scheme, however for payments made to eligible employees who have reached age 65 and older the payments will not be an early retirement scheme payment and will not be eligible for the tax free base limits under the Scheme. These payments will be concessionally taxed as employment termination payments.
40. All eligible employees are employed under:
- Victorian Public Service Workplace Determination 2012; or
  - Film Victoria Collective Agreement 2009.

## **Ruling**

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41. The early retirement scheme to be implemented by Department of Business and Innovation (Victoria) including Film Victoria is an early retirement scheme for the purposes of section 83-180.

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

43. 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**

5 September 2012

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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.*

44. Where a scheme satisfies the requirements of subsection 83-180(3), that scheme will be an early retirement scheme.

45. 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**

46. 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).

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

48. The Commissioner considers that this is an appropriate class of persons for the Scheme to 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**

49. 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).

50. The facts at paragraphs 11 to 18 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 the employer. It is therefore considered 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).

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

51. The Scheme is proposed to operate for a period from 5 September 2012 to 31 December 2013. The approval provided by this class ruling has been granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

52. The Scheme will be in operation for approximately 16 months. This is considered appropriate due to the circumstances of the restructure and the employees that will be given the option of early retirement under the Scheme.

### **Other relevant information**

53. 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 termination is an early retirement scheme payment.

54. 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 83-130(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)).

55. 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'.

56. 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.

57. For the 2012-13 income year, the tax free amount is limited to \$8,806 (base amount) plus \$4,404 (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 for each income year.

58. The total of the amount received on the termination of employment calculated in accordance with paragraphs 21 to 23 of this ruling may qualify as an early retirement scheme payment.

59. The total payment calculated in accordance with paragraph 58 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 57 of this ruling to determine the 'tax free' amount of the early retirement scheme payment.

60. The 'tax free' amount will:

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

61. 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**

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

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## References

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- Previous draft:*
- ITAA 1997 83-170
  - ITAA 1997 83-180
- Not previously issued as a draft
- ITAA 1997 83-180(1)
- Related Rulings/Determinations:*
- 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)
- TR 2006/10
- Subject references:*
- early retirement
  - employment termination
  - redundancy or early retirement scheme payments
- ITAA 1997 83-180(5)
  - ITAA 1997 83-180(6)
  - ITAA 1997 960-285
  - ITAA 1997 995-1(1)
  - TAA 1953
- Legislative references:*
- ITAA 1997
  - ITAA 1997 82-135
  - ITAA 1997 82-135(e)
  - Copyright Act 1968
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### ATO references

NO: 1-405OEZI  
ISSN: 1445-2014  
ATOlaw topic: Income Tax ~~ Assessable income ~~ employment termination payments