


# ***CR 2013/101 - Income tax: early retirement scheme - Melbourne Health***

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## Class Ruling

### Income tax: early retirement scheme – Melbourne Health

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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

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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 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 Melbourne Health who receive a payment under the scheme described in paragraphs 9 to 28 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 paragraphs 9 to 28 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.

## Date of effect

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7. This Ruling applies from 18 December 2013 to 30 April 2014. The Ruling continues to apply after 30 April 2014 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. Melbourne Health is seeking the Commissioner of Taxation's approval to implement an early retirement scheme titled the Melbourne Health Voluntary Departure Packages (VDP) (the Scheme).
10. Melbourne Health currently employs approximately 8,500 employees, which translates to just over 6000 Effective Full-time (EFT) employees.
11. The 2013-14 financial year position remains extremely challenging and fiscally constrained for Melbourne Health. As a result, Melbourne Health has implemented various measures to efficiently manage the EFT employee numbers.
12. However to ensure that Melbourne Health is able to continue to provide high quality and safe patient care while also operating on a financially sustainable basis, further cost cutting measures are required.

13. The purpose of implementing the Scheme is to reduce, by voluntary means, the size of Melbourne Health's workforce and as a consequence, directly reduce its fixed operating cost.

14. The Scheme will rationalise and reorganise the operation of Melbourne Health. This includes the redesign of work tasks and work flow such that the position will not need to be replaced. For example, it may include reviewing patient flow through from admission to discharge from hospital, and reviewing the various touch points or patient/staff interactions to assess how the care pathway/process can be more streamlined for the patient and more efficient for the department. This could include the use of electronic tools to enable more efficient handover from one shift to another and from one department to another.

15. The class of employees to whom the Scheme applies is all full-time and part-time Melbourne Health employees who are not aged 65 or over as at the date of termination of employment under the Scheme.

16. The Scheme will not apply to staff at any level who fall within the following categories:

- Registered Nurses and Enrolled Nurses, eligible to be covered by the *Nurses and Midwives Agreement 2012-2016*, who are employed in accordance with the Nurse/Patient ratios as detailed in Schedule C of the Agreement and who carry a patient workload and are directly involved in the provision of nursing care to patients.
- Registered Nurses and Enrolled Nurses, eligible to be covered by the *Nurses and Midwives Agreement 2012-2016*, who carry a patient workload and are directly involved in the provision of nursing care to patients in chemotherapy, dialysis, admission centres and day procedure/day surgery wards or units.
- Senior Medical Specialists (Medical Specialists/Doctors) and Doctors-in-training who are directly involved in the provision of medical services to patients.
- Registered Psychiatric Nurses, Psychiatric Enrolled Nurses, Psychiatric Services Officers, eligible to be covered by the *Public Mental Health Services Agreement 2012-2016*, who are part of the agreed staffing allocation provided in clause 59 of the Agreement and who are directly involved in the provision of mental health services to patients and clients.

- Allied Health professionals, including Allied Health therapy streams, eligible to be covered by *Health Professionals & ors. Agreement 2011-2015*; *Medical Scientists, Pharmacists and Psychologists Agreement 2012-2016*; and *Public Mental Health Services Agreement 2012-2016* (with respect to health professionals working in mental health services), who are directly involved in delivery of health services to patients and clients.
- Ancillary and Support staff who are directly involved in the provision of clinical services to patients.
- Executive Officers or staff on Government Sector Executive Remuneration Panel contracts.
- Staff employed on fixed term contracts.
- Staff within the qualifying period or probationary period of employment i.e. with periods of employment of less than 6 months as at the expression of interest date.
- Staff absent from work during maternity leave or other parental leave as at the expression of interest date.
- Staff in receipt of Workers Compensation payments, or subject to current Certificate of Capacity prescribing modified or alternate duties, or those who have lodged a claim for workers compensation awaiting acceptance of liability.
- Staff on short term or temporary absence on Sick/Personal leave as defined in Regulation 3.01 of the *Fair Work Regulations 2009*.
- Staff on any form of authorised or unauthorised unpaid leave as at the expression of interest date.
- Current participants in any Graduate Recruitment program.

17. Where the number of staff members applying for a VDP exceeds the number of positions that can be relinquished, the offer of a VDP will be made first to those eligible staff members with the longest recognised continuous service in the Victorian Public Sector.

18. The payment to be made under the Scheme is as follows:

- four weeks' pay in lieu of notice ( paid irrespective of the actual notice of termination provided to the employee);
- a lump sum voluntary departure incentive of up to \$10,000 for a full time employee and pro-rated for part time employees; plus

- two weeks' per pay per completed year of service up to a maximum of 15 years (therefore maximum of 30 weeks). It is pro-rated for employees with less than 12 months service, and applies to employees who have moved part-time to full-time or vice versa.
19. Retirement must occur under the Scheme before the employee turns 65 years of age.
20. The Scheme will operate from 18 December 2013 to 30 April 2014.
21. All eligible employees whose applications are accepted under the Scheme will terminate employment and receive payments under the Scheme no later than 30 April 2014.
22. Melbourne Health will retain a limited right of veto to be applied to applications by personnel who cannot be readily replaced and whose loss would impair the efficiency of Melbourne Health's operations.
23. Employees will receive payment for any accrued leave entitlements. However these payments will not form part of the payment under the Scheme.
24. The Scheme will not be made in lieu of superannuation benefits.
25. Any employees who terminate employment, other than under the proposed Scheme, will not be entitled to receive a payment under this Scheme.
26. There will be no agreement in place with Melbourne Health and an employee, or Melbourne Health and any other person, to employ an employee following the termination of employment under the Scheme.
27. The employee accepting the offer agrees not to seek or accept re-employment or any other fee for service from any other public sector employer for a minimum period of three calendar years from the date of their separation.
28. There is no association between the eligible employees and Melbourne Health. Accordingly, the employees and Melbourne Health will be at arm's length.

## **Ruling**

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29. The early retirement scheme to be implemented by Melbourne Health 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.

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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.

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**Commissioner of Taxation**

18 December 2013

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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.*

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 15, subject to the exclusions set out in paragraph 16 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. Paragraphs 11 to 14 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 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 18 December 2013 to 30 April 2014. 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 five months. This is considered to be appropriate due to the circumstances of the reorganisation and the 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 2013-14 income year, the tax-free amount is limited to \$9,246 (base amount) plus \$4,624 (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 18 of this ruling may qualify as an early retirement scheme payment.

47. The total payment calculated in accordance with paragraph 46 of this ruling will be measured against the limit calculated 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; and
- not be able to be rolled-over into a superannuation fund.

49. Any payment in excess of this limit will be an employment termination payment where the payment is received no later than 12 months after termination of employment and will be split 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.

50. The taxable component of the employment termination payment will be taxed at various rates depending on the person's age. It should be noted the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

## Appendix 2 – Detailed contents list

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

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## References

<i>Previous draft:</i>	- ITAA 1997 82-135(e)
Not previously issued as a draft	- ITAA 1997 83-170
	- ITAA 1997 83-180
<i>Related Rulings/Determinations:</i>	- ITAA 1997 83-180(1)
TR 2006/10	- ITAA 1997 83-180(2)
	- ITAA 1997 83-180(3)
<i>Subject references:</i>	- ITAA 1997 83-180(3)(a)
- early retirement scheme	- ITAA 1997 83-180(3)(b)
payment	- ITAA 1997 83-180(3)(c)
- employment termination	- ITAA 1997 83-180(5)
payment	- ITAA 1997 83-180(6)
	- ITAA 1997 995-1(1)
<i>Legislative references:</i>	- TAA 1953
- ITAA 1997	- Copyright Act 1968
- ITAA 1997 82-135	

### ATO references

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