

CR 2013/7 - Income tax: Queensland Government Department of Education, Training and Employment - early retirement scheme



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Class Ruling

Income tax: Queensland Government Department of Education, Training and Employment – 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

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 Queensland Government Department of Education Training and Employment, shown at paragraphs 24, to 31 who receive a payment under the scheme described in paragraphs 9 to 43 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 43 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

7. This Ruling applies from 30 January 2013 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

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

9. Queensland Government Department of Education, Training and Employment 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 'Queensland Government Department of Education, Training and Employment early retirement scheme', referred to as the Scheme.

11. A Career Change Program has previously been implemented by the Queensland Government Department of Education, Training and Employment (hereafter referred to as 'the Department of Education, Training and Employment').

12. The Queensland Government has recently initiated a fiscal strategy for the state's finances that has impacted on public sector staffing levels. To support these savings, the Queensland Government has requested that the Department of Education, Training and Employment conduct a further Career Change Program.

13. The Department of Education, Training and Employment is committed to students gaining the best possible educational outcomes.

14. The Department of Education, Training and Employment recognises that some longer serving teachers may not be equipped with the contemporary teaching skills possessed by shorter serving teachers and that this may inhibit their ability to deliver contemporary quality teaching outcomes. The Department of Education, Training and Employment acknowledges that longer serving teachers may no longer be interested in or motivated to update their skills to reflect the best practice contemporary teaching style.

15. The purpose of the Career Change Program is to facilitate a significant change and renewal to the Department of Education, Training and Employment workforce. This change is necessary to improve the current standard of teachers and the quality of skills in the teaching workforce which will in turn improve the overall quality of education in Queensland.

16. 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 teaching skills from the system, facilitates their career change and provides opportunities for young, highly trained, skilled and motivated teachers.

17. With significant reform still currently underway through the Council of Australian Governments (COAG) national agenda which includes the ongoing implementation of a national curriculum and national teaching standards, teachers accepted under the Career Change Program will be drawn from areas that have a requirement for high quality educators. The teachers, who will replace those who exit under the Career Change Program, will be required to have the qualities and commitment demanded to satisfy the Department of Education, Training and Employment's quality teaching agenda.

18. Replacement teachers will be recent graduates and display the highest standard of academic and practical ability with varying occupational skills. They will also bring contemporary teaching techniques to the education system. This will significantly increase productivity through the improvement of learning outcomes for Queensland students.

19. The Queensland College of Teachers (QCT) oversees the teacher registration processes for the state of Queensland. To be eligible for registration in Queensland, teachers are required to:

- have appropriate qualifications;
- meet the suitability to teach criteria; and
- be able to communicate in English at a professional level.

20. 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.

21. The professional development and training opportunities for teachers will vary depending upon their specific development needs. A professional development activity could include a major literacy or numeracy in-service scheme or a teaching or education related course at a tertiary institution or TAFE.

22. Any training options will be considered as part of the four phase Developing Performance Framework (for teachers) and in reference to the QCT Continuing Professional Development Framework.

23. Participation in the Career Change Program is entirely voluntary.

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

25. A teacher will be considered to not have contemporary teaching skills where the teacher has failed to undertake a significant professional development activity in the past five years and has no interest in gaining those skills or any opportunity to undertake an alternate career path. 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.

26. The Career Change Program is not a program to manage poor performance. Teachers who are a party to a Managing Unsatisfactory Performance Process are ineligible to participate in the program.

27. The Department of Education, Training and Employment will identify the teachers who fall into this class during Term 1 of the 2013 school year.

28. There may be a small number of key employees who may fall within the category of employees that the Department of Education, Training and Employment 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.

29. The Department of Education, Training and Employment 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. The program provides the opportunity to replace generalist primary teachers with teachers able to teach in specialist areas across Year 7-9 of schooling. 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.

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

- 65 years of age; 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

31. Teachers on more than 12 months unpaid leave will not be eligible for this program.

32. Approximately 4,000 employees may meet the eligibility criteria.

33. There is no minimum number of employees that the Department of Education, Training and Employment would like to retire under the Career Change Program. However, the Department of Education, Training and Employment plans to make offers to a minimum 250 currently employed teachers.

34. If the Career Change Program is not fully subscribed then the Department of Education, Training and Employment may make further offers of early retirement to teachers meeting the selection criteria during Term 2 of the 2013 school year.

35. 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.

36. Eligible employees will have 14 days to apply for retirement under the Career Change Program.
37. Eligible employees will have 12 days to accept an offer to retire under the Career Change Program.
38. Employees accepted under the Career Change Program will be separated from the Department of Education, Training and Employment 7 days after accepting the offer.
39. The Career Change Program will remain open until 31 December 2013.
40. 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.
41. No part of this payment will be in lieu of superannuation benefits.
42. 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.
43. There is no agreement between the Department of Education, Training and Employment and an employee who accepts an offer of early retirement, or the Department of Education, Training and Employment and another party, to employ the employee after the retirement.

Ruling

44. The early retirement scheme to be implemented by the Department of Education, Training and Employment is an early retirement scheme for the purposes of section 83-180.
45. 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 voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.
46. 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.

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.*

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

48. 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

49. 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).

50. The class of employees to whom early retirement will be offered is set out in paragraphs 24 to 31 of this Ruling.

51. 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

52. 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).

53. The facts at paragraphs 13 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 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

54. The Scheme is proposed to operate from the date of the Commissioner's approval 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.

55. The Scheme will be in operation for under twelve 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

56. 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.

57. 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)).

58. 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'.

59. 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.

60. 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.

61. The total of the amount received on the termination of employment calculated in accordance with paragraph 40 of this ruling may qualify as an early retirement scheme payment.

62. The total payment calculated in accordance with paragraph 40 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 60 of this ruling to determine the 'tax free' amount of the early retirement scheme payment.

63. The 'tax-free' amount will not be an employment termination payment.

64. 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

65. 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:

- early retirement
- employment termination
- redundancy or early retirement scheme payments

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 960-285
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

ATO references

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