

CR 2014/33 - Income tax: Melbourne Market Authority early retirement scheme

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Class Ruling

Income tax: Melbourne Market Authority early retirement scheme

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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 provisions

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 whom this scheme applies is all employees of the Melbourne Market Authority (MMA) shown at paragraph 17, who receive a payment under the scheme described in paragraphs 9 to 38 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 38 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

7. This Ruling applies from 19 March 2014 to 31 March 2015. The Ruling continues to apply after 31 March 2015 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. The Melbourne Market Authority (MMA) 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 '*Melbourne Market Authority early retirement scheme*', referred to as the Scheme.
11. Since 1969, MMA has operated the Melbourne Wholesale Fruit, Vegetable and Fresh Cut Flower market from its current location at Footscray Road, West Melbourne. The now antiquated facility with its ageing infrastructure no longer meets the needs of the industry.
12. A new state-of-the-art, modern market facility has been built at Cooper Street, Epping with the intention of market operators transferring to it in late 2014 or early 2015. In line with the move, the MMA has reviewed its business model and has commenced the process of implementing this change.

13. The new business model aims to ensure the long term viability of the wholesale market facility, and the hundreds of businesses that rely on the market. A more sustainable market operation will ensure the continuance of market operations and benefit produce growers, wholesalers and retailers.

14. As the MMA moves toward creating a user pays business environment, Market users will place significant pressure on MMA to improve efficiency, reduce costs and minimise the fees which are levied on tenants and users which are then passed on to consumers via produce costs.

15. This series of change to the MMA business environment will necessitate MMA introducing the new business model which will result in a smaller workforce which in many instances will require different skills to those which are currently utilised. New systems, technologies and practices may impact on the current level of staffing.

16. The purpose in implementing the Scheme is to assist in rationalising and re-organising the MMA's operations and reduce the number of employees in non-service delivery and back-office roles to a level that is consistent with the new business model.

17. The class of employees to whom the Scheme applies is all eligible employees who are employed under the *Melbourne Market Authority Enterprise Agreement 2010-13* (or its successor).

18. The following employees are specifically excluded from participating in the Scheme. They are:

- Fixed term contract and casual employees.
- Employees on probation and other trial arrangements.
- Employees receiving Workcover arrangements.
- Employees in the Information Technology department.
- Executive officers.

19. 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.

20. 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.

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

22. Participation in the Scheme is entirely voluntary.
23. Employees are not compelled to accept offers and may withdraw an expression of interest at any time prior to accepting an offer.
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 at the MMA.
26. 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, these do not form part of the payment made under the Scheme.
27. 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.
28. From the date an offer is made, eligible employees will be given one week to make a decision to accept or reject the offer.
29. All employees who accept the offer to retire under the Scheme will be required to terminate employment and receive the payment 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 March 2015.
30. The actual date of termination will be via mutual agreement with an employee's Departmental Manager or the MMA CEO. The employee will receive a written quotation within four weeks based on their departure date but no later than 31 March 2015.
31. It is proposed the Scheme will be implemented from 19 March 2014 to 31 March 2015.
32. The payments made under the Scheme do not include any payment in lieu of superannuation benefits.
33. The payments made under the Scheme will be at arm's-length.
34. 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, for a minimum period of three calendar years from the date of their separation.
35. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.
36. Employees 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.

37. All eligible employees are employed under the *Melbourne Market Authority Enterprise Agreement 2010-2013* or its successor.

Ruling

38. The early retirement scheme to be implemented by MMA is an early retirement scheme for the purposes of section 83-180.

39. 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.

40. 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 Taxation

19 March 2014

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.***

41. Where a scheme satisfies the requirements of section 83-180 that scheme will be an ‘early retirement scheme’.

42. 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

43. 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).

44. The class of employees to whom early retirement will be offered is set out in paragraph 17 and subject to the exclusions set out in paragraph 18 of this Ruling.

45. 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

46. 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).

47. 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 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

48. The Scheme is proposed to operate from 19 March 2014 to 31 March 2015. The approval to be provided by the class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

49. The Scheme will be in operation for approximately 12 months. This is considered 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

50. 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.

51. 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)).

52. 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'.

53. 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.

54. 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 six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation. For a payment made in the 2014-15 income year, the tax free amount is limited to \$9,514 (base amount) plus \$4,758 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates.

55. The total of the amount received on termination of employment calculated in accordance with paragraphs 19 to 21 of this ruling may qualify as an early retirement scheme payment.

56. The total payment being made to eligible employee under the age of 65 years and calculated in accordance with paragraph 55 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 54 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

57. The 'tax-free' amount will:

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

58. 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 (ETP) includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

59. Payments made under the Scheme in excess of the tax-free limit will be concessionally taxed up to the ETP cap (\$180,000 for the 2013-14 income year) and will continue to have access to the full benefit of an ETP tax offset under subsection 82-10(3).

60. The ETP cap is reduced by ETPs received earlier in the year or by ETPs received in an earlier year relating to the same termination.

Appendix 2 – Detailed contents list

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

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References

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

ATO references

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