

CR 2015/30 - Income tax: Sandhurst Department of Health and Human Services Early Retirement Scheme 2015-2016



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Class Ruling

Income tax: Sandhurst Department of Health and Human Services Early Retirement Scheme 2015-2016

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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 provisions 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 employees to whom this scheme applies is all ongoing staff employed by the Department of Health and Human Services, who meet the criteria in paragraph 15 of this Ruling, and who receive a payment under the scheme described in paragraphs 10 to 40 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 10 to 40 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. The Ruling applies from 13 May 2015 to 31 July 2016. The Ruling continues to apply after 31 July 2016 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, the 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 the 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 Victorian Department of Health and Human Services (the Department) is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.

10. The scheme will be titled '*Sandhurst Department of Health and Human Services Early Retirement Scheme 2015-2016*', referred to as the Scheme.

11. The Department is restructuring its delivery of support for people with a disability from institutional style care to Person Centred Active Support (PCAS), generally provided through smaller group homes.

12. In line with this restructure, the Department is closing its Sandhurst Residential Service Facility (Sandhurst) at the end of June 2016, with three group homes to commence operation in March 2016 and the remaining two group homes to commence operation by 1 July 2016.

13. Service designs for the new group homes indicate that up to 45 equivalent employees will be required across the five group homes. Therefore, some existing Sandhurst employees may be reassigned to work in one of the new group homes. However, this cannot be guaranteed by the Department.

14. The current Sandhurst workforce consists of 60 on-going employees made up of 55 Direct Care and five artisan staff.

15. The class of employees to whom the Scheme applies is all on-going employees currently employed at Sandhurst.

16. The following employees are excluded from participating in the Scheme:

- employees on unpaid leave for the entire duration of the expression of interest period (other than unpaid parental leave)
- employees with less than three months service with the Department (that is, employees on probation)
- employees engaged on a fixed-term employment contract
- casual employees, and
- employees who are in receipt of WorkCover payments.

17. The payment to be made to eligible employees under the Scheme is 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) an additional two weeks' pay per completed year of continuous service up to a maximum of fifteen years.

18. The formulation of the payment is based on completed years of service with the Victorian public sector only. For on-going part time employees payments under paragraphs 17(a) and 17(b) of this Ruling 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 17(c) above will be a pro-rata payment.

19. Where an employee who is offered a package has less than one year of continuous service, they will be offered a corresponding fraction of the package they would have been paid at one year.
20. In addition, all employees whose employment is terminated under the Scheme will receive a payment in lieu of any accrued leave such as annual leave and long service leave in accordance with the relevant enterprise agreement or other industrial instrument. However, these payments will not form part of the payment made under the Scheme.
21. Participation in the Scheme is entirely voluntary.
22. There is no minimum number of early retirement offers under the Scheme.
23. The number of packages available under the Scheme is limited to 20.
24. Where the number of employees seeking access to the Scheme exceeds the number of packages available, the offer will be made to those who have the longest length of continuous service with the Victorian public sector.
25. Following approval of the Scheme, the Department will call for expressions of interest from eligible employees.
26. All eligible employees will then have 14 calendar days to express interest in applying for a package (expression of interest period).
27. Offers will be made by the Department to eligible employees within 21 calendar days after the expression of interest period has closed.
28. An employee who receives an offer will then have a further 14 days after receiving the offer to make the decision to accept or decline the offer.
29. The Department will finalise a list of those employees to be offered a package.
30. Where an employee accepts an offer, that employee will retire under the Scheme and terminate their employment with the Department between 1 March 2016 and by no later than 30 June 2016.
31. It is proposed that the Scheme will be implemented from the 13 May 2015 to 30 July 2016.
32. The Direct Care employees who do not secure a package or who are not offered another role will be declared surplus. The five artisan employees have already been declared surplus to staffing requirements as there are no equivalent employment roles for these employees under the new group home arrangement.
33. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

34. Any employee who terminates their employment other than under the Scheme, will not be entitled to receive the Scheme payment.
35. Payments made under the Scheme for staff who have not yet reached 65 years will be processed as an early retirement scheme payment.
36. Payments made to eligible employees who are 65 years or older at the date of termination will not be eligible for tax-free base limits under the early retirement scheme. These payments will be concessionally taxed as employment termination payments (ETPs) up to the ETP cap amount.
37. The Scheme payment will not be made in lieu of superannuation benefits.
38. Payments made under the Scheme will be at arm's length.
39. There is no agreement in place between the eligible employees and the Department, or between the Department and another person, to employ any employee after retirement under the Scheme.
40. All employees who terminate under the Scheme will be subject to a three-year restriction on re-employment in the Victorian public sector.

Ruling

41. The early retirement scheme to be implemented by the Department of Health and Human Services (Victoria) (the Department) is an early retirement scheme for the purposes of section 83-180.
42. Accordingly, so much of the payment received by an eligible employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of their 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.

Commissioner of Taxation

13 May 2015

Appendix 1 – Explanation

① *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. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83-180(3).

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 now considered.

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 under the Scheme is set out in paragraph 15 of this Ruling, subject to paragraph 16 of this Ruling.

48. 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 Department. 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. Paragraphs 11 to 14 of this Ruling describe the nature of the rationalisation or re-organisation of the Department's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force of the Department.

51. The Scheme will be in operation for approximately 15 months. This is considered appropriate due to the circumstances of the re-organisation.

52. It is considered that the Scheme is to be implemented by the Department with a view to rationalising or re-organising the operations of the Department 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

53. The Scheme is proposed to operate for a period commencing from 13 May 2015 of the Scheme to 30 July 2016. 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.

Other relevant information

54. 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 their employment at the time of the retirement, is an early retirement scheme payment.

55. 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 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)).

56. 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'.

57. 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.

58. For the 2014-15 income year, the 'tax-free' amount is limited to \$9,514 (base amount) plus \$4,758 (service amount) for each completed year of 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.

59. In accordance with section 960-285, the base limit and service amount limits are indexed in line with average weekly ordinary time earnings for each income year. Accordingly, for the 2015-16 income year, the base amount is \$9,780 and the service amount is \$4,891.

60. The total of the amount received on termination of employment calculated in accordance with paragraph 17 of this Ruling may qualify as an early retirement scheme payment.

61. The total payment calculated in accordance with paragraph 17 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraphs 58 and 59 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

62. The 'tax-free' amount will:

- not be an ETP, and
- not be able to be rolled-over into a superannuation fund.

63. Any payment in excess of this limit will be an ETP 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 ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income. The taxable component of the ETP 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

64. 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 payment

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 995-1(1)
- TAA 1953

ATO references

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