

# ***CR 2015/99 - Income tax: Department of Education Western Australia Teacher Career Transition Program***

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## Class Ruling

# Income tax: Department of Education Western Australia Teacher Career Transition Program

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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 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 entities to whom this scheme applies is those employees of the Department of Education Western Australia who receive a payment under the scheme described under the heading *Scheme*.

## Qualifications

4. The class of entities defined in the Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described under the heading *Scheme*.
5. If the scheme actually carried out is materially different from the scheme that is described in the Ruling, then:
  - the Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
  - the Ruling may be withdrawn or modified.

## Date of effect

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6. The Ruling applies from 18 November 2015 to 16 December 2016. The Ruling continues to apply after 16 December 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

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7. Department of Education Western Australia (the Department) is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
8. The scheme will be titled '*Department of Education Western Australia Teacher Career Transition Program*', hereafter referred to as the Program.
9. In December 2011, the Western Australian Government announced that Year 7 classes should move from primary education to secondary education in 2015. Consequently, structural changes occurred to the Department's work force and the 'Switch Program' was introduced to help existing primary teachers convert to secondary teaching.
10. The movement of primary students into secondary school has resulted in the number of available permanent vacancies for primary teachers being reduced by 354. As at June 2015, there were 132 primary teachers waiting to be placed in a permanent vacancy.
11. The Program aims to facilitate a significant change in the Department's work force necessary to improve the standard of teachers and their skills which in turn will improve the overall quality of education in Western Australia.

12. The Program will renew the Department's primary school teaching work force through facilitation of a career change for some existing teachers and the provision of opportunities for newly graduated teachers with contemporary teaching skills.
13. The class of employees to whom the Program applies are:
- primary school teachers who are permanently employed but are not placed in a permanent position.
  - primary school teachers with ten or more years of experience who have not undertaken significant professional development within the last five years as per requirements of the WA Teachers Registration Board.
14. The following class of employees are excluded from participating in the Program:
- teachers who are engaged in formal performance improvement processes.
  - teachers who are currently, and have been, absent from the workplace continuously for 12 months on unpaid leave.
  - teachers located in the Department's list of traditionally harder to staff schools.
  - Teachers who have acquired exemplary teacher status (Level 3 Classroom teacher).
15. If the number of employees who wish to participate in the Program is greater than the maximum number of employees the Department is prepared to accept into the Program, then those employees who apply first will be accepted first.
16. The Department will invite eligible employees to register their interest in the Program in either Term 4 of 2015 and/or Term 1, 2 or 4 of 2016.
17. All offers under the Program will be made within four weeks of receipt of an expression of interest.
18. Employees who are deemed suitable and receive an offer under the Program must terminate their employment at the end of the term in which the offer is made.
19. The Program will remain open until 16 December 2016.
20. There is no minimum number of subscriptions necessary under the Program. The Department will continue to case manage the affected employees offering support as needed and employment opportunities as they arise should the Program not be fully subscribed.
21. Full-time employees deemed suitable and accepted into the Program will be paid a lump sum payment of \$50,000. Part-time employees will receive a pro-rata payment.

22. The payment will be made within 30 days of the employee's exit date.
23. The payment under the Program will be in excess of any superannuation or other benefits which the employees would otherwise receive.
24. No part of the payment will be in lieu of superannuation benefits.
25. An employee who terminates their employment under the Program will not be eligible for future employment with the Department.
26. The retirement of employees who receive a payment under the Program must occur before they turn 65 years of age.

## Ruling

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27. The early retirement scheme to be implemented by the Department is an early retirement scheme for the purposes of section 83-180.
28. 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 their employment at the time of the retirement will be an early retirement scheme payment.
29. 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 November 2015

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## Appendix 1 – Explanation

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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.***

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

31. 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**

32. 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).

33. The class of employees to whom early retirement will be offered is set out under *Class of entities*.

34. 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**

35. 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).

36. The nature of the rationalisation or re-organisation of the employer's operations are described above under *Scheme*. In approving the scheme, the Commissioner has had regard to the changes in the operations and nature of the work force 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**

37. The scheme is proposed to operate for a period from 18 November 2015 to 16 December 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.

38. The scheme will be in operation for approximately fourteen 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**

39. 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.

40. 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)).

41. 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'.

42. 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.

43. For the 2015-16 income year, the tax-free amount is limited to \$9,780 (base amount) plus \$4,891 (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.

44. For the 2016-17 income year, the base amount and the service amount is yet to be determined at the publication of this Ruling. Therefore, employees should check the ATO website for the 2016-17 income year indexed amounts.

45. The total of the amount received on the termination of employment calculated in accordance with paragraph 21 of this Ruling may qualify as an early retirement scheme payment.

46. The total payment calculated in accordance with paragraph 22 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 43 and 4 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

47. The 'tax-free' amount will:

- not be an employment termination payment (ETP), and
- not be able to be rolled-over into a superannuation fund.

48. 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 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.

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

## **Appendix 2 – Detailed contents list**

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

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## References

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

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### ATO references

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