


# **CR 2019/44 - Bialik College - early retirement scheme 2019**

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## Class Ruling

### Bialik College – early retirement scheme 2019

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#### **📌 Relying on this Ruling:**

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that the Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

#### **Summary – 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 provisions**

2. The relevant provisions dealt with in this Ruling are:
- section 83-170 of the *Income Tax Assessment Act 1997* (ITAA 1997)
  - section 83-180 of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

#### **Class of entities**

3. The class of employees to whom this scheme applies is those employees of Bialik College shown at paragraph 14 of this Ruling, who receive a payment under the heading ‘Scheme’.

#### **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 under the heading Scheme.

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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  - this Ruling may be withdrawn or modified.

## Date of effect

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6. This Ruling applies from 17 July 2019 to 30 June 2020. The Ruling continues to apply after 30 June 2020 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 the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

## Scheme

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7. The following description of the scheme is based on information provided by the applicant.
8. Bialik College is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.
9. The scheme will be titled '***Bialik College early retirement scheme 2019***', hereafter referred to as 'the Scheme'.
10. Bialik College is an independent Jewish School located in East Hawthorn, Victoria.
11. As a result of falling enrolments in Kinder and early Primary, Bialik College is undertaking a workforce reform strategy aimed at reducing surplus staff.
12. The program reflects Bialik College's commitment to supporting aged employees transitioning into retirement.
13. The purpose in implementing the Scheme is to rationalise and re-organise Bialik College's operations.
14. The class of employees to whom the Scheme applies is all Bialik College employees who:
- are employed directly as Kindergarten teachers or Kindergarten assistants, and
  - are at least 59 years of age as at 30 June 2019.
15. Bialik College will not limit the maximum number of eligible employees.

16. If the number of employees initially willing to participate in the Scheme is less than the maximum, Bialik College will continue to consider other initiatives to support its aim to renew, refresh and reform its workforce.

17. All eligible full time employees who retire under the Scheme will receive a lump sum payment as follows:

Provisions	Kinder Teachers	Kinder Assistants
Notice period	One Term (Term 4 2019)	One Term (Term 4 2019)
Ex Gratia Payment	Equivalent to 10 weeks' salary	Equivalent to 10 weeks' salary

18. All employees terminated under the Scheme will receive their accrued annual and long service leave entitlements. However, these entitlements do not form part of the payment made under the Scheme.

19. Following approval of the Scheme, all eligible employees within the class will be invited to express their interest in participating in the Scheme.

20. All offers will be made no later than 25 September 2019.

21. Once an offer is made, applicants will have two weeks to accept or decline.

22. Eligible employees who accept an offer to retire under the Scheme will terminate employment and receive payment on a date mutually agreed between the employee and Bialik College. All employees retiring under the Scheme will receive payment and cease their employment prior to the end of the school year, being 13 December 2019.

23. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

24. Any employee, who terminates employment other than under the Scheme, will not be entitled to receive the Scheme payment.

25. In order to receive a concessional tax early retirement scheme payment, eligible employees must retire and receive payment under the Scheme before they turn 65 years of age.

26. Payments made under the Scheme will be at arm's length.

27. There is no agreement in place between the eligible employees and Bialik College, or between Bialik College and another person to employ any employee after the retirement under the Scheme.

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## Ruling

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28. The early retirement scheme to be implemented by the Bialik College is an early retirement scheme for the purposes of section 83-180.

29. 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.

30. 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**

17 July 2019

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## **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.*

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

32. 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**

33. 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).

34. The class of employees to whom early retirement will be offered is set out in paragraph 14 of this Ruling.

35. 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**

36. 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).

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37. Paragraphs 11 to 13 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 work force 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).

38. 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 commencing from 18 July 2019 to 30 June 2020. 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.

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

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), (5) and (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 the 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. In accordance with section 83-170 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 2018-19 income year, the tax-free amount is limited to \$10,399 (base amount) plus \$5,200 (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.

46. For the 2019-20 income year, the base amount and the service amount are yet to be determined at the date of publication of this Ruling. Therefore, employees should check the ATO website for these indexed amounts at the relevant time.

47. The total of the amount received on termination of employment calculated in accordance with paragraph 18 of this Ruling may qualify as an early retirement scheme payment.

48. The total payment calculated in accordance with paragraph 18 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraphs 46 and 47 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

49. The 'tax-free' amount will:

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

50. Any payment in excess of this limit will be an ETP 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.

51. 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.

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## Appendix 2 – Detailed contents list

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

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## References

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- Previous draft:*
- ITAA 1997 83-180
- Not previously issued as a draft
- ITAA 1997 83-180(1)
  - ITAA 1997 83-180(2)
  - ITAA 1997 83-180(3)
- Related Rulings/Determinations:*
- TR 2006/10
- 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)
- Legislative references:*
- ITAA 1997
  - ITAA 1997 82-135
  - ITAA 1997 82-135(e)
  - ITAA 1997 83-170
  - ITAA 1997 995-1(1)
  - TAA 1953
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### ATO references

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