

CR 2021/44 - Museums Victoria - early retirement scheme 2021



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Class Ruling

Museums Victoria – early retirement scheme 2021

❶ Relying on this Ruling

This publication (excluding appendix) 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.

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What this Ruling is about

1. This Ruling sets out the tax consequences of an early retirement scheme implemented by Museums Board of Victoria (Museums Victoria).
2. Full details of this scheme are set out in paragraphs 9 to 30 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to the employees of Museums Victoria who receive a payment under the scheme.

When this Ruling applies

5. This Ruling applies from 15 July 2021 to 29 October 2021.

Ruling

6. Museums Victoria – early retirement scheme 2021 (the Scheme) is an early retirement scheme for the purposes of section 83-180.

7. 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 voluntary termination of their employment at the time of the retirement will be an early retirement scheme payment.

8. In addition, so much of the Scheme payment, as falls within the threshold calculated in accordance with section 83-170, is not assessable income and is not exempt income.

Scheme

9. The following description of the Scheme is based on information provided by the applicant. If the Scheme is not carried out as described, this Ruling cannot be relied upon.

10. Museums Victoria is undertaking a transformative program to deliver a major revitalisation of its museums and operations to create world-class experiences that grow visitation and revenue.

11. A plateauing of funding from both public and private sources since 2012, the impacts of operational shutdowns due to COVID-19 restrictions and significant increases in operating costs (most notably salaries and wages) has resulted in a projected deficit and a reduction in the viability of the sustainability of Museums Victoria's current business model. In order to continue delivery of this transformative program, the Museums Victoria Executive, with full support of the Museums Victoria Board, is focused on addressing the structural budgetary issues.

12. As such, Museums Victoria has determined that in order to address the projected deficit and to increase the viability and sustainability of the organisation, Museums Victoria will offer voluntary departure packages in order to reduce recurrent expenditure on salaries and wages.

13. The Victorian Government released an Industrial Relations Framework for managing the COVID-19 pandemic which meant Museums Victoria could not implement the early retirement scheme approved in Class Ruling CR 2020/13 *Museums Victoria – early retirement scheme 2020*. The Industrial Relations Framework has ceased operation and Museums Victoria is now proceeding with an early retirement scheme.

14. The class of employees that are eligible to participate in the Scheme are those employees who, as at the date that the Scheme comes into effect, meet the following criteria:

- are employed on an ongoing basis
- have two years or more of service
- are employed in any division of Museums Victoria, and
- are Victorian Public Service Classification Grades 2 – 7.

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

- employees who are in positions funded by an external grant
- employees with an active workers' compensation claim, and
- employees on unpaid leave.

16. Eligible employees will have a limited period to submit their application to participate in the Scheme.

17. If significant numbers of applications are made within a department or division, participation will be limited to maintain minimum operating staffing requirements in the department or division. Preference will be given to employees with the greatest number of years of service.

18. There is also a limit on the total number of packages available under the Scheme. If more employees apply to participate in the Scheme than the number of packages available, offers will be made to employees with the greatest number of years of service.

19. Employees whose applications are accepted will receive formal offers shortly after the application period closes. Employees will have a limited time to accept or decline the offer. Once an offer is accepted, voluntary withdrawal from the Scheme will not be permitted.

20. Employees who accept an offer to retire will exit the organisation and receive their final payments by no later than 29 October 2021.

21. Employees who retire under the Scheme will be paid the following:

- lump sum payment of four weeks' salary irrespective of length of service
- two weeks of salary per each completed year of continuous service (capped at 15 years), and
- a lump sum voluntary departure incentive based on continuous years of service as follows

Years of service	Voluntary departure incentive
Two to seven years	\$5,000
Eight to nine years	\$7,000
Over nine years	\$10,000

22. All payments will be calculated with reference to the employee's superannuable salary and any superannuable allowances applicable to their continuing role as at the date of termination of employment.

23. The payment made under the Scheme is not in lieu of any superannuation benefit an employee may otherwise have been entitled to.

24. The payment made under the Scheme is additional to what an employee would be entitled to receive if they had otherwise voluntarily terminated their employment.

25. Employees retiring under the Scheme will receive their statutory entitlements, such as annual leave and long service leave, where applicable. However, these amounts will not form part of the payment under the Scheme.

26. Museums Victoria and employees who participate in the Scheme will do so at arm's length.

27. The retirement of employees who receive a payment under the Scheme will occur before they reach pension age.

28. There is no agreement in place between any eligible employee and Museums Victoria, or between Museums Victoria and another person, to employ an employee after retirement under the Scheme.

29. Employees who retire under the Scheme will be subject to a three-year restriction on re-employment with the Victorian public sector.

30. Participation in the Scheme is entirely voluntary.

Commissioner of Taxation

14 July 2021

Appendix – Explanation

❶ *This Explanation 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.*

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Requirements for an early retirement scheme

31. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 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 requirements are considered in paragraphs 33 to 41 of this Ruling.

All employees within a class approved by the Commissioner may participate in the scheme

33. In order to satisfy the first requirement in subsection 83-180(3), participation in a scheme must be offered to all employees in a class approved by the Commissioner.

34. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 14, subject to paragraph 15, of this Ruling.

35. The Commissioner considers that, for the purposes of paragraph 83-180(3)(a), this is an appropriate class of persons for participation in the Scheme to be offered to. In approving this class of employees, the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of Museums Victoria.

36. Therefore, the first requirement of subsection 83-180(3) is satisfied.

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

37. 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).

38. Paragraphs 10 to 12 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 Museums Victoria. 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).

39. Accordingly, the second requirement of subsection 83-180(3) has been met.

The scheme must be approved by the Commissioner prior to its implementation

40. The Scheme is proposed to operate for a period from 15 July 2021 to 29 October 2021.

41. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

42. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

Other relevant information

43. 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 termination is an early retirement scheme payment.

44. 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 reached pension age 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)).

45. 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.
46. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
47. 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.
48. For the 2020–21 income year, the tax-free amount is limited to \$11,341 (base amount) plus \$5,672 (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 11 months do not count as a whole year for the purposes of this calculation.
49. 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.
50. The total payment calculated in accordance with paragraph 21 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 46 of this Ruling to determine the tax-free amount of the early retirement scheme payment.
51. The tax-free amount will not be:
- an employment termination payment (ETP)
 - able to be rolled-over into a superannuation fund.
52. 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 ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income.
53. 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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References*Previous draft:*

Not previously issued as a draft

- ITAA 1997 83-180(3)
- ITAA 1997 83-180(3)(a)
- ITAA 1997 83-180(3)(b)

Related Rulings/Determinations:

CR 2020/13

- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)

Legislative references:

- 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)

- TAA 1953
- Social Security Act 1991 23(1)

Other references:

Victoria State Government [Public Sector Industrial Relations Policies 2015](#)

ATO references

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