

CR 2021/85 - Department of Education and Training - early retirement scheme 2021-2023



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Status: **legally binding**

Class Ruling

Department of Education and Training – early retirement scheme 2021-2023

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 the Department of Education and Training (DET).
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 you if you are a DET employee who receives a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 2 December 2021 to 28 February 2023.

Status: **legally binding**

Ruling

6. The Department of Education and Training early retirement scheme 2021–2023 (hereafter referred to as ‘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. The Victorian Government 2021/22 Budget included investments to stimulate the economy, promote economic recovery, create jobs and invest in the implementation of the Victorian Government’s reform agenda.

11. In the context of this changed economic landscape and increased expenditure to fund the health and economic response to the global COVID–19 pandemic, the Victorian Government is taking steps to progressively realign expenditure to target areas of highest priority.

12. The Victorian Government has endorsed a range of savings initiatives in the 2021/22 Budget which impacts funding across the Victorian Public Service (VPS) over the coming four years.

13. As a result of paragraphs 10 to 12 of this Ruling, there will be a significant change to DET operations that will necessitate DET to re-evaluate the size and composition of its workforce. DET will be required to implement the Scheme to rationalise and re-organise its operations in order to make a significant contribution to the initiatives being carried out by the Victorian Government, including the reduction in the number of employees engaged in the VPS.

14. DET is required to achieve a reduction in baseline expenditure and a total saving over five years (with four out of the five years remaining). Thus, it is necessary for DET to re-evaluate the size and composition of its workforce.

15. The class of employees to whom this Scheme applies are:

- all ongoing VPS employees of DET that are classified as VPS Grade 2 to 6 and Senior Technical Specialist (STS) Grade 7 (that is, VPSG 2-6 and STS 7), and
- those who are aged under the pension age as defined by the *Social Security Act 1991* as at the date of termination of employment under the Scheme.

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

- employees that are over the pension age on the date of termination of employment under the scheme
- staff recruited through the VPS Graduate Recruitment Scheme who are substantive DET employees, commenced on the payroll in the past five years and are on pay at the date the scheme formally begins
- senior executive service employees
- fixed term VPS employees
- casual employees
- employees on probation and other like arrangements
- employees on weekly WorkCover payments
- employees on unpaid leave for the entire duration of the expression of interest (EOI) period, other than unpaid parental leave
- employees who are in positions funded by fixed term funding or an external grant
- employees currently under investigation for allegations of misconduct/serious misconduct, and
- employees who have formally advised DET of their resignation or retirement on or after the commencement of the EOI process.

17. Following approval of the Scheme, DET will offer employees within the class the opportunity to retire early. Employees will have at least two weeks from the date of invitation to submit an EOI.

18. Employees will be notified of the outcome within 30 calendar days and will have two weeks to accept or decline the offer to participate in the Scheme.

19. Where the number of employees seeking to participate in the Scheme exceeds the number of packages available (such that the Scheme is oversubscribed), applications will be processed on the basis of employee cohorts, employee classification, length of continuous service and any compassionate circumstances with priority to be given to employees in the following order:

- employees with compassionate circumstances, such as a terminal illness
- employees who satisfy any of the criteria at paragraph 15 of this Ruling with the exclusion of those belonging to the following cohorts
 - Allied Health Professionals, except the small group of former Specialist Children Services and Early Childhood Intervention Service employees who are currently unattached
 - specialist employees in the Information Technology and Management Division
- classification – employees classified at levels VPSG5 and VPSG6
- length of continuous service – those with a longer service period; for the purposes of determining length of continuous service within the VPS, a VPS employee's teaching service is to be treated as public service (where applicable).

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20. If the number of employees initially willing to participate in the Scheme is less than the number expected by DET, a second EOI process may be implemented by DET during the duration of the Scheme.

21. The Scheme will run for a period of up to 15 months in order to enable staff to exit in tranches and in line with the delivery of government savings that must be achieved over the five-year period. The timing of the exit under each tranche will occur as follows, unless otherwise agreed between DET and the employee:

- tranche one – to commence within one month of approval of the Scheme, with departures to occur from 28 February 2022
- tranche two – to commence mid-2022, with departures to occur on 30 September 2022, and
- tranche three – to commence late-2022, with departures to occur on 28 February 2023.

22. Employees who retire under the Scheme will receive:

- (a) a lump sum incentive of \$15,000 for a full-time employee
- (b) four weeks' pay (irrespective of the employees length of service)
- (c) two weeks' pay per each completed year of continuous service, up to a maximum of 15 years, and
- (d) an additional four weeks' pay for employees that are over 54 years of age.

23. For ongoing part-time employees, payments for subparagraphs 22(a) and (b) of this Ruling will be calculated on a pro rata basis. For employees who have a period of part-time employment in the most recent years of continuous service, payment for subparagraph 22(c) of this Ruling will be calculated on a pro rata basis.

24. Employees will receive payment for any accrued statutory entitlements; however, these payments will not form part of the payment under the Scheme.

25. The Scheme payment will not be made in lieu of superannuation benefits.

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

27. Employees who retire under the Scheme and receive the early retirement payment will do so before they reach the pension age (as defined in the *Income Tax Assessment Act 1997* by reference to the *Social Security Act 1991*).

28. At the time of retirement, there will be no arrangement between DET and terminating employees, or between DET and any other person, for those employees to be employed after retirement.

29. An employee who participates in the Scheme will be restricted from working in the VPS for a period of 12 months.

30. There is no association between the eligible employees and DET. Accordingly, the employees and DET will be at arm's length.

Commissioner of Taxation

1 December 2021

Status: **not legally binding**

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.

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

33. In order to satisfy the first requirement of subsection 83-180(3), 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 15, subject to paragraph 16, 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 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 DET.

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

Status: **not legally binding**

The employer's purpose in implementing the scheme is to rationalise or re-organise the employers 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 required by paragraph 83-180(3)(b).

38. Paragraphs 10 to 14 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 DET. It is considered that the Scheme is to be implemented by DET with a view to rationalising or re-organising the operations of DET 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 2 December 2021 to 28 February 2023.

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)).

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45. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
46. 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.
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 2021–22 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. For the 2022–23 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.
50. The total of the amount received on the termination of employment calculated in accordance with paragraph 22 of this Ruling may qualify as an early retirement scheme payment.
51. 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 48 of this Ruling to determine the tax-free amount of the early retirement scheme payment.
52. The tax-free amount will not be:
- an employment termination payment (ETP), and
 - able to be rolled-over into a super fund.
53. 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.
54. 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.

Status: **not legally binding**

References

Previous draft:

Not previously issued as a draft

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)
 - ITAA 1997 83-180(3)
 - ITAA 1997 83-180(3)(a)
 - ITAA 1997 83-180(3)(b)
 - ITAA 1997 83-180(5)
 - ITAA 1997 83-180(6)
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Social Security Act 1991 23(1)
-

ATO references

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