

CR 2022/46 - Victorian Department of Premier and Cabinet - early retirement scheme 2022-2023



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Status: **legally binding**

Class Ruling

Victorian Department of Premier and Cabinet – early retirement scheme 2022–2023

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 income tax consequences of an early retirement scheme implemented by the Victorian Department of Premier and Cabinet (the Department).
2. Full details of this scheme are set out in paragraphs 9 to 29 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 an employee of the Department who receives a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 26 May 2022 to 30 June 2023.

Ruling

6. The Victorian Department of Premier and Cabinet early retirement scheme 2022–23 (the Scheme) is an early retirement scheme for the purposes of section 83-180.

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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. As a result, there will be a significant change to the Department's operations that will necessitate the Department re-evaluating the size and composition of its workforce. The Department will be required to implement the Scheme to rationalise and reorganise 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 Victorian Public Service (VPS).

13. Realigning the operations of the Department to create greater efficiencies, through the removal of duplication and a head count reduction of the workforce, will contribute to the savings targets required of the Department.

14. The class of employees that is eligible to participate in the Scheme and receive payments under the Scheme is all ongoing employees of the Department who are aged 55 years and above (subject to the exclusions set out at paragraphs 15 and 20 of this Ruling).

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

- Executive Officers
- employees with less than three years of service
- employees engaged on a casual basis
- employees engaged on a fixed-term basis
- employees on probation
- employees on leave without pay (other than for parental leave)
- employees in receipt of weekly payments of compensation under the *Workplace Injury and Rehabilitation and Compensation Act 2013* (Vic)
- graduates currently in the VPS graduate program
- employees who have resigned in writing as at the date of the Scheme's commencement

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- employees who have completed the VPS graduate program within the last five years, and
- employees who are subject to investigation or other formal process for allegations of misconduct or serious misconduct which may lead to termination of the employee's employment.

16. There is a limit on the number of employees who can retire under the Scheme. Further, for operational reasons and to ensure that the number of employees participating in the Scheme within a certain classification level (as described in the Victorian Public Service Enterprise Agreement) or area of the Department are not oversubscribed, there is a limit on the number of packages available within a classification or area of the Department.

17. As soon as practicable following approval of the Scheme, the Department will offer employees within the class the opportunity to retire early. Employees will have 14 calendar days from the date of invitation to submit an expression of interest (EOI).

18. Employees will be notified of the outcome of their EOI within four weeks and those employees who are made an offer 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 length of continuous service, with those employees with a longer period of service to be given priority.

20. If the number of employees initially willing to participate in the Scheme is less than the number of packages available or if the number of packages allocated to a particular classification and/or area of the Department have not been exhausted as part of the first EOI process, the Department may implement a second EOI process during the Scheme period. In respect of the second EOI process, the criteria in paragraph 14 of this Ruling would change to include employees aged 45 years or older, subject to the exclusions in paragraph 15 of this Ruling.

21. Employees who accept an offer to participate in the Scheme will generally be required to terminate their employment and receive the Scheme payment within four weeks of accepting the offer. The date of termination may be extended by mutual agreement between the Department and the employee to ensure the maintenance of service delivery and to account for operational requirements. Employees who participate in the Scheme will terminate employment and receive payment by no later than 30 June 2023.

22. Employees who retire under the Scheme will receive:

- (a) four weeks' pay (irrespective of the employee's length of service)
- (b) a lump sum incentive of up to \$15,000 for a full-time employee
- (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 who are over 54 years of age.

23. For ongoing part-time employees, payments for subparagraphs 22(a) and 22(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.

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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. Employees who retire under the Scheme 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*).

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

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

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

Commissioner of Taxation

25 May 2022

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

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.

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

32. 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.

33. The class of employees to whom early retirement will be offered under the Scheme is all employees over 45 years of age, subject to paragraph 15 of this Ruling.

34. 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 the Department.

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

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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 required by paragraph 83-180(3)(b).

37. Paragraphs 10 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 workforce of the Department. 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).

38. Accordingly, the second requirement of subsection 83-180(3) 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 from 26 May 2022 to 30 June 2023.

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

41. 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

42. 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.

43. 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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44. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

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. 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.

47. 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.

48. 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.

49. The total of the amount received on the termination of employment calculated in accordance with paragraph 22 of this Ruling will qualify as an early retirement scheme payment.

50. 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 47 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), and
- able to be rolled-over into a super 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.

Status: **not legally binding**

References

Related Rulings/Determinations:

TR 2006/10

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)
- Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)

Other references:

- Department of Treasury and Finance
(26 October 2021) Victorian Budget 2021/22
-

ATO references

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