


CR 2007/84 - Income tax: early retirement scheme - Transport Accident Commission

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Class Ruling

Income tax: early retirement scheme – Transport Accident Commission

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ⓘ This Ruling 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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for entities receiving payment under the scheme. There are many conditions attached to this Ruling and readers should be careful to ensure that these conditions are met before relying on this Ruling.

Relevant provision(s)

3. 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 subsequent references are to the ITAA 1997 unless stated otherwise.

Class of entities

4. The class of entities to which this Ruling applies is those employees of the Transport Accident Commission who receive a payment under the scheme described in paragraphs 15 to 30 of this Ruling.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. 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 in paragraphs 15 to 30 of this Ruling.

7. 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.

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9. A copy of this Ruling must be given to all employees eligible to participate in the early retirement scheme.

Date of effect

10. This Ruling applies from 2 October 2007 to 31 December 2009. However, the Ruling continues to apply after 31 December 2009 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

11. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or

- the relevant provisions are not amended.

12. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

13. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

14. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

15. The following description of the scheme is based on information provided by the applicant.

16. The Transport Accident Commission (TAC) is seeking approval for an early retirement scheme.

17. The TAC is transferring its operations from Melbourne to Geelong in 2009. Due to the distance between the Melbourne and Geelong sites the TAC recognises that some employees may not wish to relocate offices. They wish to implement an early retirement scheme to assist staff that choose to leave because of the relocation.

18. The scheme will be implemented prior to the relocation to assist with the replacement of employees who know they want to leave TAC due to the relocation. The scheme will remain open for a period after the relocation to enable employees who are not sure whether they wish to remain with TAC to have a trial period at the new office.

19. The scheme will be open to all permanent employees that were employed by the TAC as of 1 May 2006 (eligible employees). Eligible employees will be able to indicate they are interested in participating in the scheme by submitting an expression of interest to the TAC. The final date to lodge an expression of interest is 30 September 2009.

20. The TAC will offer Voluntary Departure Packages (VDPs) to all eligible employees who have submitted expressions of interest. Employees who receive an offer will then have to accept the offer to receive a VDP. The timing of departures under the scheme will be at the discretion of TAC according to business and workplace planning needs.

21. The payment that employees will receive under the VDP will be:
- \$10,000 lump sum payment;
 - 4 weeks pay in lieu of notice, and
 - 2 weeks salary for each year of service completed at TAC (capped at 15 years of service).
22. Employees who accept a VDP will not be able to seek or accept re-employment or any other fee for service from any employer within the Victorian Public Sector for a minimum of 3 years from the date of their termination in accordance with the Victorian Government's Industrial Relations Policy in effect as at August 2007.
23. Employees will terminate employment and receive the payment no later than 31 December 2009.

Payments made under the Scheme

24. For a payment made under the above mentioned scheme to qualify as an early retirement scheme payment, the conditions set out in paragraphs 25 to 30 of this Ruling must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.
25. The payment must be received by an employee because the employee retires under an early retirement scheme. The early retirement scheme payment will be so much of the payment that 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 the retirement.
26. The payment must not be a payment mentioned in subsection 82-135 (apart from paragraph 82-135(e)).
27. Where 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 must not exceed the amount that could reasonably be expected to be made had they been dealing with each other at arm's length.
28. The employee must retire before the following:
- the day he or she turned 65; and
 - if the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service – the day he or she would reach the age or complete the period of service (as the case may be).
29. At the time of the retirement, there must be no arrangement in force between the employee and the employer, or between the employer and another person, to employ the employee after the retirement.

30. The payment must not include any part of the employment termination payment that was paid to the employee in lieu of superannuation benefits to which the employee may have become entitled at the time the employment termination payment was made or at a later time.

Ruling

31. The early retirement scheme to be implemented by the Transport Accident Commission is an early retirement scheme for the purposes of section 83-180.

32. 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 the voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

33. 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.

Commissioner of Taxation

19 September 2007

Appendix 1 – Explanation

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.*

34. The Commissioner has issued Taxation Ruling TR 94/12 Income tax: approved early retirement scheme and bona fide redundancy payments, which sets out guidelines on the application of the former section 27E of the *Income Tax Assessment Act 1936*, which section 83-180 of the ITAA 1997 replaced.

35. Where a scheme satisfies the requirements of subsection 83-180(3) that scheme will be an 'early retirement scheme'.

36. 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 discussed below.

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

37. 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).

38. The class of employees to whom early retirement will be offered is set out in paragraph 19 of this Ruling.

39. The Commissioner considers that 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 employer. 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

40. 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).

41. Paragraph 17 and 18 of this Ruling describes the nature of the rationalisation or re-organisation of the employer's operations. The scheme is to be implemented with a view to rationalising or re-organising the operations or work-force of the employer by making the changes approved by the Commissioner. Accordingly, the second condition for approval has been met.

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

42. The scheme is proposed to operate for a period from 2 October 2007 to 31 December 2009. Approval was granted prior to implementation therefore the third condition is satisfied.

43. The scheme will be in operation for approximately 27 months. While this is longer than the period recommended in TR 94/12 it is considered to be appropriate in this case due to the circumstances of the restructure and the number of affected employees that will be given the option of early retirement under the scheme.

Other relevant information

44. 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.

45. 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 83-130(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 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)).

46. The term 'arrangement' is defined in subsection 995-1(1) as meaning 'any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings'.

47. From 1 July 2007, 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 2007-08 income year, the tax-free amount is limited to \$7,020 (base limit) plus \$3,511 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. Please note that six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation. The base limit and the service amount limit will be indexed in line with increases in average weekly ordinary time earnings.

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 of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 48 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; and
- not be able to be rolled-over into a superannuation fund.

52. Any payment in excess of this limit will be an employment termination payment and split up 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.

53. Employment termination payments cannot be rolled over into a superannuation fund unless the payment constitutes a transitional termination payment.

54. A transitional termination payment arises where an employee is entitled as at 9 May 2006 to a payment on termination of employment that is paid before 1 July 2012 and is specified under:

- a written contract;
- a law of the Commonwealth, a State, a Territory or another country (or an instrument under such a law); or
- a workplace agreement within the meaning of the *Workplace Relations Act 1996*.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 94/12

Subject references:

- early retirement scheme
payment
- employment termination
payment

Legislative references:

- ITAA 1997 82-135
- ITAA 1997 82-135(e)

- ITAA 1997 83-130(6)
- 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 995-1(1)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

ATO references

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