


CR 2008/29 - Income tax: early retirement scheme - Melbourne Convention & Exhibition Trust

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Class Ruling

Income tax: early retirement scheme – Melbourne Convention & Exhibition Trust

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ⓘ This publication 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 legislative 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 Melbourne Convention & Exhibition Trust 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 9 April 2008 to 30 June 2008. However, the Ruling continues to apply after 30 June 2008 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. Melbourne Convention & Exhibition Trust (MCET) is seeking approval for an early retirement scheme.

17. The MCET was established under the *Melbourne Convention and Exhibition Trust Act 1996* (Vic) and was the owner and venue manager of both the Melbourne Convention and Melbourne Exhibition Centres.

18. As a result of the Victorian State Government's revised organisational plan in relation to the new Melbourne Convention and existing Melbourne Exhibition Centres, MCET will not be delivering security services.

19. The purpose of the proposed scheme is to reduce the number of permanent security employees in the restructuring of operations and the cessation of MCET security services.

20. There is no maximum nor minimum number of employees required to achieve the aim of the early retirement scheme.

21. Alternatives to ensure the reorganisation is completed are:
- employees being engaged by the private sector operator;
 - employees being redeployed to other operational areas; and
 - employees having their employment terminated.
22. Employees are covered by the following relevant agreements:
- the Melbourne Exhibition and Convention Centre Agreement 2005; and
 - one individual common law contract dated 15 October 2003.
23. The class of employees is all the full-time security team on shift work at Clarendon Street who do not commence employment with the new private sector security operator.
24. The employees who retire under the scheme will terminate employment before age 65.
25. The scheme will be in operation until 30 June 2008.
26. Payments to be offered to employees who participate in the early retirement scheme are as follows:
- incentive payment of \$10,000;
 - 2 weeks pay for each year of continuous service up to a maximum of 15 weeks; and
 - 4 weeks pay in lieu of notice.
27. The payments to be made under the early retirement scheme do not include payments in lieu of superannuation benefits to which the participating employee is entitled.
28. The early retirement scheme payments are amounts in excess of any payment that an employee receives in consequence of a voluntary termination of employment.
29. There is no arrangement in force between the participating employees and MCET and any other person to employ the participating employees after the termination of their employment.
30. The participating employees and MCET are dealing with each other at arm's length.

Ruling

31. The early retirement scheme to be implemented by Melbourne Convention & Exhibition Trust is an early retirement scheme for the purposes of section 83-180.

32. Accordingly, so much of the payment received by an employee 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 the retirement will be an early retirement scheme payment in relation to the taxpayer.

33. In addition, so much of the 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

9 April 2008

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

35. 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.

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 at paragraph 23 of this Ruling.

39. The Commissioner considers that this is an appropriate class of employees 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 purpose 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. Paragraphs 17 to 19 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 employer. It is therefore 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 purpose of paragraph 83-180(3)(b).

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

42. The scheme is proposed to operate from 9 April 2008 to 30 June 2008. Approval was granted prior to implementation therefore the third condition is satisfied.

43. The scheme will be in operation for approximately 3 months which is within the period recommended in TR 94/12.

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 83-180(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. An early retirement scheme payment made on or after 1 July 2007 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 year ending 30 June 2008, this amount is limited to \$7,020 (base amount) 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 amount and service amount will be indexed to rise in each subsequent year 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 26 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.

Appendix 2 – Detailed contents list

54. 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:

- approved early retirement scheme payments
- employment termination payments

Legislative references:

- ITAA 1936 27E
- 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
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968
- Melbourne Convention and Exhibition Trust Act 1996 (Vic)

ATO references

NO: 2008/4308

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ employment termination payment – early retirement scheme