

# ***CR 2019/53 - Department of Health and Human Services - SIL and STAA early retirement scheme 2019***



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## Class Ruling

### Department of Health and Human Services – SIL and STAA early retirement scheme 2019

#### **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.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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#### **What this Ruling is about**

1. This Ruling sets out tax consequences of an early retirement scheme implemented by the Department of Health and Human Services (DHHS).
2. Full details of this scheme are set out in paragraphs 8 to 26 of this Ruling.

#### **Who this Ruling applies to**

3. This Ruling applies to the employees who receive a payment under the scheme.

#### **When this Ruling applies**

4. This Ruling applies from 11 September 2019 to 31 December 2020.

#### **Ruling**

5. The *Department of Health and Human Services – SIL and STAA early retirement scheme 2019* is an early retirement scheme for the purposes of section 83-180 of the *Income Tax Assessment Act 1997* (ITAA 1997).

6. 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.

7. In addition, so much of the early retirement scheme payment as falls within the threshold calculated in accordance with section 83-170 of the ITAA 1997 is not assessable income and is not exempt income.

## **Scheme**

8. 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.

9. The scheme will be titled ***Department of Health and Human Services – SIL and STAA early retirement scheme 2019***, hereafter referred to as ‘the scheme’.

10. The National Disability Insurance Scheme (NDIS) was initiated by the Australian Government to assist Australians with disability and created a managed market for disability services in Australia.

11. The DHHS is a department of the State Government of Victoria (the State). The DHHS historically provided disability services, including Supported Independent Living (SIL) and Short Term Accommodation and Assistance (STAA) services through its own public sector work force. The individuals employed to provide SIL and STAA services are employees of the State and working for the DHHS.

12. The DHHS decided non-government providers are best placed to meet the requirements of the NDIS. In 2018 the State announced it will transfer the disability services to not-for-profit providers. This major reform will require a reorganisation of the current public sector DHHS work force which provides the disability services.

13. The DHHS is implementing an early retirement scheme to enable employees that do not wish to participate in the reorganisation to voluntarily leave their employment with the State and within the DHHS.

14. The class of employees to whom the scheme applies is all persons who meet all of the following criteria:

- currently employed by the State Government of Victoria on an ongoing basis
- currently working for the DHHS
- currently engaged in providing SIL or STAA services, and
- under 65 years old on the date of termination of employment under the scheme.

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

- employees on unpaid leave for the entire duration of the expression of interest period, other than unpaid parental leave
- employees with less than three months’ service with the DHHS
- employees engaged on a fixed-term employment contract
- casual employees. and

- employees who are in receipt of WorkCover payments.

16. Eligible employees who retire under the scheme will receive a payment comprising of the following three parts:

- (a) four weeks' pay
- (b) a lump sum voluntary departure incentive of up to \$10,000 (for a full-time employee), and
- (c) two weeks' pay per completed year of continuous service, up to a maximum of fifteen years.

17. The payment is calculated based on completed years of continuous service with the Victorian public sector only.

- For ongoing part-time employees, parts (a) and (b) of the payment will be pro-rated.
- For employees with a period of part-time employment in the most recent years of continuous service, part (c) of the payment will be pro-rated.
- Where an employee has less than one year's continuous service, the payment will be a corresponding fraction of what would have been paid at one year.

18. All eligible employees terminated 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 made under the scheme.

19. The scheme will operate as follows:

- eligible employees will be invited to submit an expression of interest (EOI) to participate in the scheme
- eligible employees who submit an EOI will be notified of the outcome, and
- all eligible employees who accept the offer to retire under the scheme will terminate their employment and receive payment no later than 31 December 2020.

20. The number of packages in each class will be limited. If the scheme is oversubscribed, applications will be processed on the length of service. Employees with a greater length of service will receive priority.

21. The payment made under the scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

22. Employees who terminate their employment other than under the scheme, will not be entitled to receive the scheme payment.

23. The retirement of employees who receive a payment under the scheme will occur before they turn 65 years of age.

24. Payments made under the scheme will be at arm's length.

25. There is no agreement in place between any eligible employee and the DHHS, or between the DHHS and another person to employ the eligible employee after the retirement under the scheme.

26. Participation in the scheme is entirely voluntary.

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**Commissioner of Taxation**

11 September 2019

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## 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

27. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83-180(3) of the ITAA 1997.

28. Subsection 83-180(3) of the ITAA 1997 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 now considered.

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

29. 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) of the ITAA 1997.

30. 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.

31. 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. It is therefore considered that these employees meet the requirements of an

approved class of employees for the purposes of paragraph 83-180(3)(a) of the ITAA 1997.

***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***

32. 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) of the ITAA 1997.

33. 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 work force of the employer. 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) of the ITAA 1997.

34. Accordingly, the second condition for approval has been met.

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

35. The scheme is proposed to operate for a period from 12 September 2019 to 31 December 2020. The approval to be provided by this Ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c) of the ITAA 1997, this condition is satisfied.

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

***Other relevant information***

37. Under subsection 83-180(1) of the ITAA 1997, 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.

38. 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)) of the ITAA 1997:

- the retirement occurred before the employee turned 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 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 of the ITAA 1997 (apart from paragraph 82-135(e)).

39. The term 'arrangement' is defined in subsection 995-1(1) of the ITAA 1997 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.*

40. In accordance with section 83-170 of the ITAA 1997, 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.

41. For the 2019-20 income year, the tax-free amount is limited to \$10,638 (base amount) plus \$5,320 (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 eleven months do not count as a whole year for the purposes of this calculation.

42. For the 2020-21 income year, the base amount and the service amount are yet to be determined at the publication of this Ruling. Therefore, employees should check the Australian Taxation Office website for these indexed amounts at the relevant time.

43. The total of the amount received on the termination of employment calculated in accordance with paragraph 16 of this Ruling may qualify as an early retirement scheme payment.

44. The total payment calculated in accordance with paragraph 16 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraphs 41 and 42 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

45. The tax-free amount will:

- not be an employment termination payment (ETP), and
- not be able to be rolled-over into a superannuation fund.

46. 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.

47. 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.



## References

*Previous draft:*

Not previously issued as a draft

- 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(3)(c)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953

*Legislative references:*

- ITAA 1997
- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170
- ITAA 1997 83-180
- ITAA 1997 83-180(1)

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ATO references

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