

CR 2013/98 - Income tax: Department of Human Services (Property & Assets Branch) Voluntary Departure Program 2013-14



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Class Ruling

Income tax: Department of Human Services (Property & Assets Branch) Voluntary Departure Program 2013-14

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❶ 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

2. 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 legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to whom this scheme applies is all employees of the Department of Human Services (DHS) shown at paragraph 17, who receive a payment under the scheme described in paragraphs 10 to 38 of this Ruling.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
5. 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 10 to 38 of this Ruling.
6. 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.

Date of effect

7. This Ruling applies from 11 December 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Previous Rulings

8. A previous ruling issued to the DHS under class ruling CR 2012/72.

Scheme

9. The following description of the scheme is based on information provided by the applicant.
10. The DHS is seeking the Commissioner's approval to implement an early retirement scheme (the Scheme) in accordance with section 83-180.
11. The scheme will be titled the '*Department of Human Services (Property & Assets Branch) Voluntary Departure Program 2013-14*', referred to as the Scheme.
12. In 2012, the DHS underwent a reorganisation to respond more effectively to the needs of its clients and the Victorian community.

13. The reorganisation rationalised the structure of eight regions to four operational divisions and also involved a complete central restructure resulting in the creation of the following groups: Policy and Strategy, Service Design and Implementation, Community and Executive Services and Corporate Services.

14. While the organisational restructure was being planned and developed throughout 2012, the property and Asset Services Branch (part of the central Corporate Services Group) was undergoing reviews by the State Services Authority and an independent procurement audit.

15. The independent reviews have now been finalised and the department is restructuring the Property and Assets Services Branch.

16. The purpose in implementing the Scheme is to establish a new structure using a process of redesign and transition that accords with the principles and business rules of the broader departmental restructure, in order to maximise the effectiveness of this Branch in meeting the new organisational needs in property and asset management and planning.

17. The class of employees to whom the Scheme applies is all employees who hold a substantive position and are covered by the *Victorian Public Service Workplace Determination 2012* (classified as VPS) within the Property and Assets Branch of the Corporate Services Group of the DHS.

18. The following employees are ineligible to apply for a VDP under the Scheme. They are:

- Executive Officers
- Senior Technical Specialists
- Staff on fixed term contracts
- Current participants in the VPS graduate recruitment and development scheme
- Casual employees
- Staff receiving WorkCover salary payments
- Staff on leave without pay, and
- Staff with less than three months' service with the Department.

19. Participation in the Scheme is entirely voluntary.

20. All eligible employees under the Scheme will be offered a lump sum payment as follows:

- (a) four weeks' pay in lieu of notice on cessation,
- (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 in the Victorian Public Sector up to a maximum of 15 years.

21. For part-time employees, payments (a) and (b) will be calculated at the part-time rate. For employees who have a period of part-time employment in the most recent years of continuous service, payment (c) will be a pro-rata payment.
22. Where an employee who is offered a voluntary departure payment (VDP) has less than one year's service, they will receive a corresponding fraction of the VDP they would have been paid at one year.
23. All employees terminated under the Scheme will receive their accrued annual leave and unused long service leave entitlements in accordance with the relevant enterprise agreement. However, they do not form part of the payment made under the Scheme.
24. The maximum number of packages available under the Scheme program in the DHS is limited.
25. Where the number of employees seeking access to the Scheme exceeds the number of packages available, the offer will be made to those eligible employees who have the longest recognised continuous service in the Victorian public sector.
26. Following approval of the Scheme, all eligible employees will have 14 calendar days to express an interest in applying for a VDP.
27. Offers will be made to eligible employees within 14 calendar days following the 14 day expression of interest process.
28. From the date the offer was made, employees will be given a further 28 calendar days to make a decision to accept or decline the offer.
29. All employees who accept the offer to retire under the Scheme will be required to terminate employment and receive the payment within one calendar month from the date of acceptance. The actual proposed exit date is to be clearly stipulated in the VDP offer unless another date is mutually agreed with the Executive Director, Corporate Services Group.
30. If expressions of interest from eligible employees are less than the number of employees required to participate in the Scheme, or offers are rejected, the DHS may seek to undertake a second round of offers (based on the same criteria as the first round) to be made to those eligible employees.
31. It is proposed the Scheme will be implemented from the date after the Commissioner's approval to 30 June 2014.
32. The payments made under the Scheme do not include any payment in lieu of superannuation benefits.
33. The payments made under the Scheme will be at arm's-length.

34. Recipients of the Scheme are required to agree not to seek or accept re-employment or any other fee for service:

- from any Victorian public service employer, Film Victoria, the Growth Areas Authority, Public Transport Victoria, or VicRoads, for a minimum period of three calendar years from the date of their separation, and
- from any Victorian public sector employer, other than those identified above, for a minimum period of three calendar year from the date of their separation.

35. However, recipients of the Scheme can seek re-employment at any time in the following roles which are outside of the restrictions:

- police officer
- protective services officer
- fire-fighter, and
- project fire-fighter.

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

37. Staff aged 65 and older will be eligible to participate in the Scheme, however for payments made to eligible employees who have reached age 65 and older the payments will not be an early retirement scheme payment and will not be eligible for the tax free base limits under the Scheme.

38. All eligible employees are employed under the *Victorian Public Service Workplace Determination 2012*.

Ruling

39. The early retirement scheme to be implemented by DHS is an early retirement scheme for the purposes of section 83-180.

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

41. 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.

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.***

42. Where a scheme satisfies the requirements of section 83-180 that scheme will be an 'early retirement scheme'.

43. 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 now considered.

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

44. 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).

45. The class of employees to whom early retirement will be offered is set out in paragraph 17 subject to the restrictions set out in paragraph 18 of this Ruling.

46. The Commissioner considers that this is an appropriate class of persons to whom the scheme will be offered. 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).

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

47. 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).

48. Paragraphs 12 to 16 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 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). Accordingly, the second condition for approval has been met.

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

49. The Scheme is proposed to operate the date after the Commissioner's approval to 30 June 2014. The approval to be provided by the class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

50. The Scheme will be in operation for approximately six months. This is considered appropriate due to the circumstances of the reorganisation and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

51. 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 the retirement is an early retirement scheme payment.

52. 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)).

53. 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'.

54. 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.

55. For the 2013-14 income year, the proposed tax free amount is limited to \$9,246 (base amount) plus \$4,624 (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.

56. The total of the amount received on termination of employment calculated in accordance with paragraphs 20 to 22 of this ruling may qualify as an early retirement scheme payment.

57. The total payment being made to an eligible employee under the age of 65 years and calculated in accordance with paragraph 56 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 55 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

58. The 'tax-free' amount will:

- not be an employment termination payment; and
- not be able to be rolled-over into a superannuation fund.

59. Any payment in excess of this limit will be an employment termination payment where the payment is received no later than 12 months after termination of employment and will be split into tax free and taxable components. The tax-free component of an employment termination payment (ETP) includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

60. Payments made under the ERS in excess of the tax-free limit will be concessionally taxed up to the ETP cap of \$180,000 for the 2013-14 income year and will continue to have access to the full benefit of an ETP tax offset under subsection 82-10(3).

61. The ETP cap is reduced by ETPs received earlier in the year or by ETPs received in an earlier year relating to the same termination.

Appendix 2 – Detailed contents list

62. 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 2006/10; CR 2012/72

Subject references:

- early retirement
- employment termination
- eligible termination payments
- redundancy or early retirement scheme payments

Legislative references:

- ITAA 1997

- ITAA 1997 82-10(3).
- 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(3)(c)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

ATO references

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