



CR 2001/10 - Income tax: Approved Early Retirement Scheme for Department of Human Services, Kew Residential Services

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 This document has changed over time. This is a consolidated version of the ruling which was published on *9 April 2001*



Class Ruling

Income tax: Approved Early Retirement Scheme for Department of Human Services, Kew Residential Services

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law dealt with in this Ruling is section 27E of the *Income Tax Assessment Act 1936*.

Class of persons

3. The class of persons to whom this Ruling applies are:

Staff in the Ancillary and Non Direct Care areas of Kew Residential Services, Eastern Metropolitan Region who receive a payment under the arrangement described in paragraphs 10 to 27. There are two categories:

- (1) Administrative staff employed in the Victorian Public Service (Non Executive) classification structure with classifications ranging from VPS-1 to VPS-5 with salaries ranging from VPS-1 \$25 470 minimum to VPS-5 \$87 108 maximum; and

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- (2) Artisan staff such as cleaners, domestic services officers, kitchen staff and trade assistants. The classifications of staff in this group are FSO and TA with salaries from \$26 015 minimum to \$40 843 maximum.

Note: Staff eligible to express interests are all employees who are on the payroll on 6 April 2001 and remain on the payroll thereafter. Staff must be employed on an open ended continuing basis.

Qualifications

- 4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
- 5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 10 to 27 is carried out in accordance with the details of the arrangement provided in this Ruling.
- 6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:
 - (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
 - (b) this Ruling may be withdrawn or modified.
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Date of effect

- 8. This Ruling applies from 9 April 2001. However, 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 (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn and ceases to have effect after 29 June 2001. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

The scheme

10. The Department of Human Services is seeking approval for an early retirement scheme known as the Voluntary Departure Package scheme (VDP).

11. The following details of the arrangement have been obtained from the Department of Human Services by correspondence dated 21 March 2001 and subsequent telephone conversation on 2 April 2001.

12. The VDP is being offered to staff in the Ancillary and Non Direct Care areas of the Kew Residential Services, Eastern Metropolitan Region. The number of staff employed in these areas is 65.

13. Staff in these areas are in two categories:

- (1) Administrative staff employed in the Victorian Public Service (Non Executive) classification structure with classifications ranging from VPS-1 to VPS-5 with salaries ranging from VPS-1 \$25 470 minimum to VPS-5 \$87 108 maximum; and
- (2) Artisan staff such as cleaners, domestic services officers, kitchen staff and trade assistants. The classifications of staff in this group are FSO and TA with salaries from \$26 015 minimum to \$40 843 maximum.

14. Staff eligible to express interest are all employees who are on the payroll on 6 April 2001 and remain on the payroll thereafter. Staff must be employed on an open ended continuing basis.

15. Administrative staff are covered by the following awards/agreements:

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- Public Service (Non Executive Staff - Victoria) (Section 170MX) Award 2000 with its accompanying DHS Negotiating Document; and
 - The Victorian Public Service (Non Executive Staff - Victoria) Agreement 2000.
16. Artisan staff are covered by the following awards/agreements:
- Victorian Health and Community Services (Psychiatric, Disability and Alcohol and Drug Services) Award 1995;
 - The HSUA Department of Human Services Intellectual Disability Services Award 1998; and
 - The HSUA Department of Human Services Intellectual Disability Services Agreement 1999.
17. These areas are restructuring and downsizing and would like to offer the option of a VDP.
18. The purpose of the VDP round is to seek expressions of interest from staff affected by the reduction of numbers in the Ancillary and Non-Direct care areas of Kew Residential Services.
19. The VDP round will remain available to staff for the remainder of the 2000/2001 financial year.
20. Staff who accept a VDP will receive the following payments:
- four weeks pay in lieu of notice; plus
 - two weeks pay for each year of service, up to a maximum of fifteen years;
- subject to a total maximum of 34 weeks pay, plus
- a lump sum VDP incentive of \$10 000.
21. Staff will also receive payment of any accrued and unused recreation leave and long service leave.
22. There is no compulsory retirement age applying to DHS staff, however staff reaching the age of 55 can voluntarily retire at any time.
23. Priority for offers of VDPs will be considered only where:
- areas are directly subject to downsizing and/or restructure;
 - staff changes are consistent with corporate objectives and strategic directions;
 - the skills required by each area to meet its future role are not reduced; and
 - opportunities to improve productivity can be realised.

24. Staff will be able to lodge expressions of interest between Monday 9 April 2001 and Thursday 26 April 2001. Expressions of interest can be lodged by completing a standard form forwarded to the Manager of the Ancillary Services of the Kew Residential Services by close of business, Thursday 26 April 2001.

25. The expected date for offers is 4 May 2001, with offers to be accepted by 28 May 2001.

26. The exit date is negotiable, but is to be no later than Friday 29 June 2001.

27. Employees who accept these packages are unable to seek re-employment with the department for 3 years from the date of termination of employment.

Payments made under the scheme

28. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the following conditions must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

29. The payment must be an eligible termination payment made in relation to the employee in consequence of his or her employment being terminated under the approved early retirement scheme.

30. The payment must not be made from an eligible superannuation fund.

31. The payment must not be made in lieu of superannuation benefits.

32. The employee terminated his employment before the earlier of:

- age 65; or
- the date on which his or her employment would have necessarily terminated under the terms of employment because of the employee attaining a certain age or completing a certain period of service.

33. 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 does not exceed what would have been paid to the employee had they been dealing at arm's length.

34. At the termination time, there is no agreement in force between the employee and the employer or the employer and another person, to re-employ the employee after the date of termination.

Ruling

35. The VDP is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936*.

36. Accordingly, so much of the eligible termination payment as exceeds the amount of an eligible termination payment that could reasonably be expected to have been made in relation to the taxpayer if the termination of employment had occurred at the termination time otherwise than in accordance with the approved early retirement scheme, is an approved early retirement scheme payment in relation to the taxpayer.

Explanations

37. Where a scheme satisfies the requirements of section 27E of the *Income Tax Assessment Act 1936* (the Act), that scheme will be an 'approved early retirement scheme.'

38. The Commissioner of Taxation (the Commissioner) has issued Taxation Ruling TR 94/12 titled: 'Income tax: approved early retirement scheme and bona fide redundancy payments' which sets out guidelines on the application of section 27E.

39. Paragraph 14 of Taxation Ruling TR 94/12 states that:

'Three conditions need to be satisfied for a scheme to qualify as an approved early retirement scheme. Those conditions are:

- (i) the scheme must be offered to all employees within a class identified by the employer (paragraph 27E(1)(a));
- (ii) the scheme must be entered into with a view to rationalising or re-organising the operations of the employer with an identified purpose in mind [paragraph 27E(1)(b)]; and
- (iii) the scheme must be approved by the Commissioner prior to its implementation [paragraph 27E(1)(c)].'

1. The scheme must be offered to all employees within a class identified by the employer

40. In order to satisfy this condition, the scheme must be offered to all employees within one of the categories specified in subparagraphs 27E(1)(a)(i) to (v).

41. The class of employees to whom the scheme is proposed to be offered are:

Staff in the Ancillary and Non Direct Care areas of Kew Residential Services, Eastern Metropolitan Region. There are two categories:

- Administrative staff employed in the Victorian Public Service (Non Executive) classification structure with classifications ranging from VPS-1 to VPS-5 with salaries ranging from VPS-1 \$25 470 minimum to VPS-5 \$87 108 maximum; and
- Artisan staff such as cleaners, domestic services officers, kitchen staff and trade assistants. The classifications of staff in this group are FSO and TA with salaries from \$26 015 minimum to \$40 843 maximum.

Note: Staff eligible to express interest are all employees who are on the payroll on 6 April 2001 and remain on the payroll thereafter. Staff must be employed on an open ended continuing basis.

42. This class of employees does not come within any of subparagraphs 27E(1)(a)(i) to (iv), therefore it must be considered under subparagraph 27E(1)(a)(v), namely, all employees of the employer who constitute a class of employees approved by the Commissioner for the purposes of this paragraph. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the employer. Accordingly, the above class of employees is considered to have met the requirements under subparagraph 27E(1)(a)(v).

43. It is noted, however, that the employer has a limited right of veto when considering offers of VDPs, as outlined at paragraph 23.

2. The scheme must be entered into with a view to rationalising or re-organising the operations of the employer with an identified purpose in mind

44. The proposed scheme must be implemented with a view to rationalise or re-organise the operations of the employer by means of one or more of the objectives set out in subparagraphs 27E(1)(b)(i) to (vi).

45. The applicant has stated that the VDPs are being offered due to the restructuring and downsizing of the area.

46. As the proposed scheme meets the requirement in subparagraph 27E(1)(b)(vi), it is considered that the second condition for approval has been met.

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

47. The applicant has advised that the dates for operation of the scheme will be from 9 April 2001 to 29 June 2001. Approval of the scheme is given prior to its implementation date, therefore the third condition is satisfied.

48. The scheme will be in operation for 12 weeks, which is within the period recommended in paragraph 28 of Taxation Ruling TR 94/12.

Other relevant information

49. Under section 27E, so much of the payment received by a taxpayer under the approved early retirement scheme, that exceeds the amount that would ordinarily have been received on voluntary retirement or resignation is an approved early retirement scheme payment.

50. It should be noted that, in order for a payment to qualify as an approved early retirement scheme payment, it must also satisfy the following requirements (as set out in subsections 27E(4) and (5) of the Act):

- the payment must be an eligible termination payment made in relation to the taxpayer in consequence of the taxpayer's employment being terminated under an approved early retirement scheme;
- the payment must not be from an eligible superannuation fund;
- the payment must not be made in lieu of superannuation benefits;
- if the taxpayer 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 what would have been paid to the taxpayer had they been dealing at arm's length;
- the date of termination was before age 65 or such earlier date on which the taxpayer's employment would necessarily have had to terminate under the terms of employment because of the taxpayer attaining a certain age or completing a certain period of service, whichever occurs first; and
- there was no agreement at the date of termination between the taxpayer and the employer, or the

employer and another person to re-employ the taxpayer after the date of termination.

51. The term 'agreement' is defined in subsection 27A(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.'

52. An approved early retirement scheme payment made on or after 1 July 1994 that falls within the specified limits will be exempt from income tax, and called the "tax-free amount."

53. For the year ending 30 June 2001, the tax-free amount is limited to \$5 062 plus \$2 531 for each whole year of completed employment service to which the approved early retirement scheme payment relates. Please note that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation.

54. Furthermore, the tax-free amount will:

- not be an eligible termination payment (ETP);
- not be able to be rolled-over;
- not include any amount from a superannuation fund or paid in lieu of a superannuation benefit; and
- not count towards the recipient's Reasonable Benefit Limit.

55. Any payment in excess of this limit will be an ordinary ETP and split up into the pre-July 83 and post-June 83 (untaxed element) components. This ETP can be rolled-over.

56. It should be noted that the amount of an approved early retirement scheme payment that is over the tax-free amount may be taxed under the provisions of the Surcharge legislation, whether it is taken in cash or rolled-over.

57. The following payments qualify as an approved early retirement scheme payment and are exempt from tax within the limits described above:

- four weeks pay in lieu of notice; plus
- two weeks pay for each year of service, up to a maximum of fifteen years;

subject to a total maximum of 34 weeks pay, plus

- a lump sum VDP incentive of \$10 000.

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

Detailed contents list

59. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

26 April 2001

Previous draft:

Not previously released in draft form

Related Rulings:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TR 94/12; TR 94/12E

Subject references:

- approved early retirement scheme payments
- eligible termination payments
- eligible termination payments components

Legislative references:

- ITAA 1936 27A(1)
 - ITAA 1936 27E
 - ITAA 1936 27E(1)(a)(i)
 - ITAA 1936 27E(1)(a)(ii)
 - ITAA 1936 27E(1)(a)(iii)
 - ITAA 1936 27E(1)(a)(iv)
 - ITAA 1936 27E(1)(a)(v)
 - ITAA 1936 27E(1)(a)
 - ITAA 1936 27E(1)(b)
 - ITAA 1936 27E(1)(b)(i)
 - ITAA 1936 27E(1)(b)(ii)
 - ITAA 1936 27E(1)(b)(iii)
 - ITAA 1936 27E(1)(b)(iv)
 - ITAA 1936 27E(1)(c)
 - ITAA 1936 27E(4)
 - ITAA 1936 27E(5)
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ATO references:

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