



CR 2001/12 - Income tax: Approved Early Retirement Scheme for The University of Sydney

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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 The University of Sydney

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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:

Full-time and fractional academic staff in the School of Chemistry who are:

- employed on a continuing contract; and
- aged 55 years and over as at 1 February 2001

and receive a payment under the arrangement described below in paragraphs 10 to 39.

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 39 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 - (b) this Ruling may be withdrawn or modified.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 3 August 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 University of Sydney is seeking approval for an early retirement scheme known as the Voluntary Early Retirement Scheme (VERS).

11. The following details of the arrangement have been obtained from the University of Sydney by correspondence dated 6 February 2001.

12. The VERS is being offered to academic staff in the School of Chemistry as a strategy to adjust the academic staffing profile in the context of restructuring the School.

13. The objectives of the School restructure are to reduce salary expenditure, improve cohesion within the school and to enhance productivity.

14. The scheme will be available to full-time or fractional academic staff in the School of Chemistry who are:

- employed on a continuing contract; and
- aged 55 years and over as at 1 February 2001.

15. Staff members who have already submitted and have had formal acceptance of their resignation or retirement are not eligible to apply.

16. Early retirement under the VERS will take effect from a date negotiated and agreed to between the applicant and the University, but no later than 3 August 2001.

17. Applications for expressions of interest are made on a standard form. Interested staff are encouraged to discuss their intentions with the Head of the School.

18. Applications are to be submitted to the Head of School no later than Friday 4 May 2001.

19. Applicants may withdraw their applications by Friday 11 May 2001 or before the University sends written approval to the applicant, whichever is the earlier.

20. Processing of applications will commence as they are received and plan to be completed by 1 June 2001. Applicants who wish their retirement to take effect earlier than this should submit their applications approximately 6 weeks before they plan to leave.

21. The appropriate Head of Department will be required to comment on the impact on the Departmental operations of the staff member's retirement and preferred leaving date.
22. The University reserves the right to refuse an application from any person only if their retirement would critically impair the operating effectiveness of the Department of the School.
23. An academic staff member who retires early under the VERS will receive a severance payment of two weeks salary for each completed year of continuous service, up to a maximum of 52 weeks salary. The severance payment is additional to the staff members' leave and superannuation entitlements on retirement.
24. An academic staff member whose application is approved under the VERS must take all their annual leave before their early retirement. If the staff member believes that this is not possible, the staff member should give their reasons in writing on the "Statement of annual leave form". This should be lodged with the VERS application for the University to consider and determine.
25. Service with the University is continuous service in a full-time, fractional (academic) substantive appointment at the time of taking early retirement.
26. Periods of leave without pay do not constitute breaks in service but do not count as service.
27. Continuous service with the now-amalgamated colleges may be included. However, service with other organisations that may be recognised for long-service leave purposes is not counted as service for calculating the severance payment.
28. Regular casual academic service with the University may be recognised for calculating years of completed continuous service only where such casual service exceeds two consecutive semesters with a minimum of 3 hours per week of teaching.
29. Prior service with the University that is not continuous with the current period of employment may be counted if the earlier resignation occurred because the staff member was expecting a baby and at the time maternity leave was not provided.
30. When calculating a severance benefit, salary is the annual rate of payment (pro rata where applicable), at the time of taking the VERS, that a staff member receives based on her or his classification, plus loadings and allowances paid on a regular and continuous basis. Salary does not include any extraneous payments.
31. The University will not re-employ a person who has retired under the VERS on any basis (including as a casual; as an independent contractor; or under a company name or partnership) for a period of 18 months from the date of their retirement. The University will not

arrange for any third party to employ a person who has retired under the VERS.

32. The University does not give financial and superannuation advice. Applicants are strongly advised to seek independent advice regarding taxation from their own accountant or financial

Payments made under the scheme

33. 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.

34. 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.

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

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

37. 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 taxpayer attaining a certain age or completing a certain period of service.

38. 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.

39. 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

40. The Voluntary Early Retirement Scheme (VERS) is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936*.

41. 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

42. 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.'

43. 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.

44. 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

45. 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).

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

Full-time and fractional academic staff in the School of Chemistry who are:

- employed on a continuing contract; and
- aged 55 years and over as at 1 February 2001.

47. 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).

48. It is noted, however, that the University reserves the right to refuse an application from any person only if their retirement would critically impair the operating effectiveness of the Department or the School. The limitation of the scheme in this way is acceptable to the Commissioner.

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

49. 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).

50. The applicant has stated that the VERS is being offered to academic staff in the School of Chemistry as a strategy to adjust the academic staffing profile in the context of restructuring the School. The objectives of the School restructure are to reduce salary expenditure, improve cohesion within the School and to enhance productivity.

51. As the proposed scheme meets the requirement in subparagraphs 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

52. The applicant has advised that the dates for operation of the scheme will be from 9 April 2001 to 3 August 2001. Approval of the scheme is given prior to its implementation date, therefore the third condition is satisfied.

53. The scheme will be in operation for 17 weeks, which is within the period recommended in paragraph 28 of Taxation Ruling TR 94/12.

Other relevant information

54. 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.

55. 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.

56. 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.'

57. 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."

58. 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.

59. 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.

60. 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.

61. 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.

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

The severance payment of two weeks salary for each completed year of continuous service, up to a maximum of fifty two weeks salary.

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

Detailed contents list

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

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Commissioner of Taxation

26 April 2001

<i>Previous draft:</i>	– ITAA 1936 27E(1)(a)(i)
Not previously released in draft form	– ITAA 1936 27E(1)(a)(ii)
	– ITAA 1936 27E(1)(a)(iii)
<i>Related Rulings:</i>	– ITAA 1936 27E(1)(a)(iv)
CR 2001/1; TR 92/1; TR 92/20;	– ITAA 1936 27E(1)(a)(v)
TR 97/16; TR 94/12; TR 94/12E	– ITAA 1936 27E(1)(a)
	– ITAA 1936 27E(1)(b)
<i>Subject references:</i>	– ITAA 1936 27E(1)(b)(i)
– Approved early retirement scheme payments	– ITAA 1936 27E(1)(b)(ii)
– eligible termination payments	– ITAA 1936 27E(1)(b)(iii)
– eligible termination payments components	– ITAA 1936 27E(1)(b)(iv)
	– ITAA 1936 27E(1)(b)(v)
	– ITAA 1936 27E(1)(b)(vi)
	– ITAA 1936 27E(1)(c)
<i>Legislative references:</i>	– ITAA 1936 27E(4)
– ITAA 1936 27A(1)	– ITAA 1936 27E(5)
– ITAA 1936 27E	

ATO references:

NO T2001/6520

BO

FOI number: I 1024751

ISSN: 1445 2014