



# ***CR 2001/14 - Income Tax: Approved Early Retirement Scheme for Yallourn Energy Pty Ltd***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *26 September 2001*



## **Class Ruling**

### **Income Tax: Approved Early Retirement Scheme for Yallourn Energy Pty Ltd**

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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.*

*[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

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

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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 is:

All employees of Yallourn Energy Pty Ltd who receive a payment under the arrangement described below in paragraphs 10 to 29.

#### **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 29 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:

- 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
- this Ruling may be withdrawn or modified.

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## Date of effect

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8. This Ruling applies from 23 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

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9. This Ruling is withdrawn and ceases to have effect after 31 August 2002. 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.

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## Arrangement

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### The scheme

10. Yallourn Energy Pty Ltd is seeking approval for their Voluntary Separation / Early Retirement Scheme.
11. The following details of the arrangement have been obtained from Yallourn Energy Pty Ltd by correspondence dated 9 April 2001 and 13 September 2001 and in telephone conversations with the company on 11 April 2001 and 13 September 2001.
12. The scheme will be in operation from 23 April 2001 to 31 August 2002.
13. Yallourn Energy Pty Ltd mines brown coal and is a manufacturer of electricity energy based in the Latrobe Valley in Victoria.
14. The company was established as a government-owned corporate entity in 1995, and was sold to the private sector in April 1996. Since then the company has undergone significant business re-focusing to establish a strong position in the National Electricity Market.
15. With continuing and ongoing re-structuring, Yallourn Energy Pty Ltd proposes to offer to its employees the opportunity to participate in a Voluntary Separation / Early Retirement Scheme.
16. The scheme is designed to assist in rationalising and re-organising the operations of Yallourn Energy for the specific purpose of reducing the size of the workforce and improving productivity. The company has been driving the need for change in corporate culture in order to deliver the required productivity increases.
17. The company over recent years has released its "Blueprint for the New Millennium", a five year plan for the "re-birth" of Yallourn Energy and is still negotiating an Enterprise Agreement which provides the necessary framework and industrial relations environment to drive the changes in corporate culture.
18. The electricity industry in the Latrobe Valley does not have a high turnover in staff. Yallourn Energy in particular has a very stable workforce (the average age of employees is 48) with few resignations. During the past 3 years, there have been fewer than 10 resignations from a workforce of 600.
19. The Voluntary Separation Package will be made available to all employees of Yallourn Energy Pty Ltd, and provision for it will be included in the new enterprise agreement, still under negotiation.
20. The scheme is not limited to a few selected employees. The company will invite expressions of interests from all employees,

however if an employee in a key position cannot readily be replaced and whose loss would impair the efficiency of the company's business operations expresses interest, the company reserves the right to refuse the application of that key employee. The veto will be based solely upon the employee's critical role in the company, and no employee will be discriminated against on any basis.

21. The Voluntary Separation Package consists of:

- two (2) weeks salary for every completed year of continuous service with the SECV, Generation Victoria and Yallourn Energy; plus
- a lump sum of:
  - \$30 000 - for employees who depart prior to 30 September 2001; or
  - \$20 000 - for employees who depart thereafter up to 31 August 2002.

Note: the lump sum available within the scheme provides for higher incentives for early departures. The objective is to stimulate a gradual reduction in the workforce over the life of the scheme, in line with proposed organisational change.

22. Employees will also receive a payment for accrued long service leave and recreation leave entitlements.

### **Payments made under the scheme**

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

24. 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.

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

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

27. The employee must terminate his or her 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.

28. 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.

29. 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**

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30. The Voluntary Separation / Early Retirement Scheme is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936*.

31. 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**

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32. 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.'

33. 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.

34. Paragraph 14 of 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***

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

36. The class of employee to whom the scheme is proposed to be offered is:

- All employees of Yallourn Energy Pty Ltd.

37. This class of employees is considered to have met the requirements under subparagraph 27E(1)(a)(i), namely all employees of the employer.

38. It is noted, however, that Yallourn Energy Pty Ltd reserves the right to refuse an application from a key employee who the company believes cannot be readily replaced and whose loss would impair the efficiency of the company’s business operations. The scheme is not limited to a few selected employees and any veto will be based solely upon the employee’s critical role in the company, and no employee will be discriminated against on any basis. 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***

39. 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).

40. The applicant has stated that the scheme is designed to assist in rationalising and re-organising the operations of the company for the specific purpose of reducing the size of the workforce and improving productivity. The company has been driving the need for change in corporate culture in order to deliver the required productivity increases and has released a five year plan, for which an Approved Early Retirement Scheme will be offered in the first eighteen months. It is negotiating an Enterprise Agreement which provides the necessary framework and industrial relations environment to drive the changes in corporate culture.

41. As the proposed scheme meets the requirements under subparagraph 27E(1)(b)(v), accordingly the second condition for approval has been met.

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

42. The applicant has requested that the offer of the scheme remain open to 31 August 2002, with the implementation date of the scheme as the earliest date the scheme is approved. Approval of the scheme will be given prior to the implementation date of 23 April 2001 and will be implemented by the company immediately after receiving written approval of the scheme. As approval will be given prior to the implementation date the third condition is therefore satisfied.

43. The scheme will be in operation for approximately 18 months. Although this is outside the period, of 12 months, recommended in paragraph 28 of TR 94/12, it is considered that the scheme should remain open for the requested period to enable the desired objective to be attained.

***Other relevant information***

44. 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.

45. 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.

46. 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.'

47. 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."

48. For the year ended 30 June 2001, the tax-free amount is limited to \$5062 plus \$2531 for each whole year of completed employment service to which the approved early retirement scheme payment relates. For the year ending 30 June 2002, the tax-free amount is limited to \$5 295 plus \$2 648 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. The \$5 295 and \$2 648 limits will be indexed to rise in the following year in line with the increase in average weekly ordinary time earnings.

49. 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.

50. 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.

51. 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.

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

- (a) two (2) weeks salary for every completed year of continuous service with the SECV, Generation Victoria and Yallourn Energy; plus
- (b) a lump sum of:
  - \$30 000 - for employees who depart prior to 30 September 2001; or
  - \$20 000 - for employees who depart thereafter up to 31 August 2002.

53. Any unused annual leave or long service leave paid will not be an eligible termination payment, but will be subject to concessional tax treatment because the termination of employment occurred under an early retirement scheme.

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

## **Detailed contents list**

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

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**Commissioner of Taxation**

9 May 2001

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

*Legislative references:*

- ITAA 1936 27A(1)

ATO References

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