



# ***CR 2001/3 - Income Tax: Approved Early Retirement Scheme (BHP Coal Pty Ltd - Voluntary Early Retirement Scheme)***

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## **Class Ruling**

### **Income Tax: Approved Early Retirement Scheme (BHP Coal Pty Ltd - Voluntary Early Retirement Scheme)**

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#### ***Preamble***

*The number, subject heading, and the **What this 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’ 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 wages employees employed by BHP Coal Pty Ltd at Blackwater Mine who receive a payment under the arrangement described below in paragraphs 10 to 37.

#### **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 37 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- (b) this Ruling may be withdrawn or modified.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**

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8. This Ruling applies from 4 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 Class Ruling is withdrawn and ceases to have effect after 26 March 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. BHP Coal Pty Ltd is seeking approval for its proposed voluntary early retirement scheme under section 27E of the *Income Tax Assessment Act 1936* (the Act).
11. BHP Coal Pty Ltd manages the mining operations conducted at the Blackwater mine.
12. BHP Coal Pty Ltd is the employer of all labour engaged at Blackwater mine.
13. In late 2000, BHP together with a third party acquired a company group which owned the South Blackwater mine. This mine is adjacent to the Blackwater mine.
14. Employees of the South Blackwater mine are not employed by BHP Coal Pty Ltd.
15. The mining operations at the South Blackwater mine consist of two underground mines and an open-cut mine.
16. BHP Coal Pty Ltd has since been appointed as manager of the South Blackwater mine.
17. Subsequent to the acquisition, BHP and another company undertook a review of the South Blackwater mine operations and determined that the two underground mines were not viable for continued operation in the future.
18. One of the underground mines is to close in March 2001 and the other is proposed to cease mining operations in early 2002.
19. It is planned that, operationally, the Blackwater open-cut mine and the South Blackwater open-cut mine will be integrated as a combined mining operation.
20. There are currently 742 employees consisting of:

Blackwater	345
South Blackwater	397 (including 201 in the two underground mines)
21. Following the closure of the two South Blackwater underground mines and implementation of the integrated open-cut mines the combined operation is planned to have 548 employees, which is a reduction of 194 employees.
22. It is planned that all current South Blackwater open-cut employees and South Blackwater underground employees will be offered positions in the proposed combined open-cut mining

operation. However, those that are not desirous of being employed under the new operation will be provided with redundancy.

23. It is expected that the level of acceptances of positions from the South Blackwater employees will result in the proposed manning level for the combined open-cut operation being exceeded.

24. Rather than retrench the required number of South Blackwater employees (who wish to continue employment in the new combined operation) it is proposed that all wages employees employed by BHP Coal Pty Ltd at Blackwater Mine will be offered an opportunity of participating in the Voluntary Early Retirement Scheme.

25. Subject to the limited right of veto, Blackwater employees who do not wish to continue employment under the combined open-cut operation will be able to opt out and finalise their employment with BHP Coal Pty Ltd.

26. The company will retain a limited right of veto over acceptance of applications under the scheme to ensure that it does not result in the departure of an excessive number of employees in particular key areas or classifications to the detriment of efficiency of operations.

27. The offer of early retirement will commence on the date of approval of the scheme, for twelve months, from 26 March 2001 to 26 March 2002.

28. The voluntary redundancy package, as stipulated in their letter of 13 February 2001 and the *Blackwater Mine Enterprise Agreement 1999* at point 18.3, consists of:

- 13 weeks pay;
- 2.5 weeks pay for each completed year of continuous service;
- up to \$3000 for relocation assistance (payable upon presentation of invoices).

29. The severance payments outlined above do not take into account any benefits that employees may be entitled to as members of superannuation funds.

30. Where applicable, employees will receive the cash equivalent of their accrued long service, annual leave and sick leave entitlements.

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

31. The following describes the requirements of the payments made under the above mentioned scheme that are covered by this Ruling. Any payments made under the scheme that do not satisfy these requirements are not covered by this Ruling.

32. 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.

33. The payments must not be made from an eligible superannuation fund.

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

35. The termination time must be 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.

36. 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.

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

## **Ruling**

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

39. 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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40. 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.'

41. The Commissioner of Taxation (hereafter referred to as '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.

42. 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:

- \* the scheme must be offered to all employees within a class identified by the employer (paragraph 27E(1)(a));
- \* 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
- \* 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***

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

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

- all wages employees employed by BHP Coal Pty Ltd at Blackwater Mine.

45. It is therefore considered that these employees meet the requirements of an approved class of employees for the purposes of 27E(1)(a)(v).

46. It is noted, however, the company will retain a limited right of veto over acceptance of applications under the scheme to ensure that it does not result in the departure of an excessive number of employees in particular key areas or classifications to the detriment of efficiency of operations.

***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***

47. 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).

48. The applicant has stated that after a review of the South Blackwater mine operations it was determined that the two

underground mines were not viable for continued operation in the future. Consequently the operations of the mines will cease with one of the underground mines closing in March 2001 and the other proposed to cease mining operations in early 2002.

49. It is planned that, operationally the Blackwater open-cut mine and the South Blackwater open-cut mine will be integrated as a combined mining operation.

50. Due to the restructuring and closure of part of the company's current operations this has resulted in a reduction of 194 employees.

51. As the proposed scheme meets subparagraphs 27E(1)(b)(iii) and (iv), accordingly 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 requested that the scheme remain open for 12 months with the implementation date of the scheme to be the date the scheme is approved. The approval date of the scheme will be 26 March 2001 and will be implemented by the organisation immediately after receiving written approval of the scheme. The third condition is therefore satisfied.

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

### ***Other relevant comments***

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 subsection 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 \$5062 plus \$2531 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 \$5062 and \$2531 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

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 is also to be noted that the taxable amount of an approved early retirement scheme payment (that is, the amount over the tax-free

amount) may be taxed under the provisions of the Surcharge legislation, whether it is taken in cash or rolled over.

### **Taxation treatment of payments from the employer**

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

- (a) 13 weeks pay;
- (b) 2.5 weeks pay for each completed year of service;
- (c) up to \$3000 for relocation assistance (payable upon presentation of invoices).

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

## **Detailed contents list**

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

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**Commissioner of Taxation**

 4 April 2001
 

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

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ATO References

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