



CR 2001/30 - Income tax: Approved Early Retirement Scheme - Albany International Pty Ltd

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 This document has changed over time. This is a consolidated version of the ruling which was published on *18 July 2001*



Class Ruling

Income tax: Approved Early Retirement Scheme - Albany International 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.*

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* (ITAA 1936).

Class of persons

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

- all employees of Albany International Pty Ltd

who receive a payment under the arrangement described below in paragraphs 10 to 27.

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- (b) this Ruling may be withdrawn or modified.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 18 July 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 30 November 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

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or

parts of documents incorporated into this description of the arrangement are:

- correspondence from a representative for Albany International Pty Ltd dated 6 June 2001.
- record of telephone conversation with a representative for Albany International Pty Ltd dated 26 June 2001.

11. Albany International has embarked on a wage and salary reduction program worldwide. In line with the international policy this program is being implemented in Australia, and as a result, employees are being offered an early retirement opportunity. The early retirement scheme is implemented with the purpose of achieving the aims of the program to reduce salary and wage expenditure.

12. The scheme is open to all employees who are within one or two years of what they consider retirement age, and who will have reached the age of fifty-five at the time of accepting the offer.

13. The terms of the scheme are:

- access to the scheme is voluntary;
- employees have the right of refusal following presentation to them of the details of their termination payments;
- the company reserves the right to withdraw the offer in cases where an employee's services are critical to the operational requirements of the business;
- the maximum number of employees to be granted this package is between three and six.

14. Employees who take advantage of the scheme will receive two weeks pay per year of service on a pro-rata basis.

15. The salary or wage applicable will be the employee's salary at the time of accepting the offer.

16. The offer will remain open until 30 November 2001 and employees accepting the offer will be required to terminate their employment by the end of the calendar year.

17. The information given to the relevant employees will be:

- a summary of the gross and net entitlement benefit offered by the company;
- a summary of accrued leave entitlements;
- an explanation of their superannuation entitlements;
- an overview of the company's intention with regard to this Early Retirement Scheme.

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- a recommendation to seek advice from a financial planner or accountant.

18. The factory employees are covered by the *Albany International Enterprise Agreement 2000 – Textile* and the *Albany International Enterprise Agreement 2000 – Metals and Electrical* which incorporate the *Textile Industry Award 1994* and the *Metal Industries Award 1984*. The relevant sections of these are attached to the letter dated 6 July 2001.

19. Management staff are employed under individual contracts. None of the contracts include additional payments in the event of early retirement. That is, the payments offered as part of this Early Retirement Scheme are above and beyond the normal entitlements of any employees upon retirement.

Payments made under the scheme

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

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

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

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

24. The employee terminated 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 the employment because of the taxpayer attaining a certain age or completing a certain period of service.

25. Accordingly, the termination of employment of management staff who are employed under individual contracts must take place prior to the date on which their employment would have terminated under the contract.

26. Where the employer and the employee 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 with each other at arm's length.

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

Ruling

28. The early retirement scheme for Albany International Pty Ltd is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936* (ITAA 1936).

29. Accordingly, so much of the eligible termination payment (ETP) that exceeds the amount of an ETP 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 in relation to the taxpayer.

Explanations

30. Where a scheme satisfies the requirements of section 27E of the ITAA 1936, that scheme will be an 'approved early retirement scheme.'

31. 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 outlines the requirements for an approved early retirement scheme under section 27E.

32. Paragraph 14 of TR 94/12 states that three conditions must be satisfied for a scheme to qualify as an approved early retirement scheme payment. 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.

33. 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).

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

- all employees who are fifty-five or over at the time of accepting the offer.

35. This class of employees is considered to have met the requirements under subparagraph 27E(1)(a)(ii), namely all employees of the employer who have attained a particular age.

36. It is noted, however, that Albany International Pty Ltd has a limited right of veto, that is, it reserves the right to withdraw the offer in cases where an employee's services are critical to the operational requirements of the business. 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 operational requirements of the business. In accordance with paragraph 22 of TR 94/12, 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.

37. 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).

38. Albany International has embarked on a wage and salary reduction program world-wide. In line with the international policy, this program is being implemented in Australia, and as a result, employees are being offered an early retirement opportunity. The early retirement scheme is being implemented with the purpose of achieving the aims of the program to reduce salary and wage expenditure.

39. The purpose of the scheme does not come within any of sub-paragraphs 27E(1)(b)(i) to (v). Therefore, it must be considered under subparagraph 27E(1)(b)(vi), that is, any other change to the operations of the employer or to the nature of the workforce of the employer approved by the Commissioner for the purposes of this paragraph. In approving the purpose of implementing the scheme, the Commissioner has considered the nature of the rationalisation or re-organisations of the employer. The purpose of implementing the

scheme thus satisfies the requirements of subparagraph 27E(1)(b)(vi). Accordingly, the second condition for a scheme to qualify as an approved early retirement scheme has been met.

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

40. Application for approval of the scheme dated 6 June 2001, was received in this office on 15 June 2001. The scheme is proposed to operate for a period from 1 July 2001 to 30 November 2001. Since the implementation date has already passed, the scheme fails to meet the requirement of paragraph 27E(1)(c).

41. However, subsection 27E(2) allows the Commissioner to overlook the failure to comply with any of the three conditions if special circumstances exist in relation to the scheme. Paragraph 30 of TR 94/12 states:

“Special circumstances include circumstances where a scheme is implemented before approval has been obtained because, for example, there has been a delay in processing an application made for its approval...”

42. It is considered that this case falls within special circumstances as set out in subsection 27E(2), and the Commissioner will waive compliance with the third requirement of subsection 27E(1).

43. The scheme will be in operation for approximately 5 months, which is within the period recommended in TR 94/12. The third condition is therefore satisfied.

Other relevant information

44. Pursuant to section 27E of the ITAA 1936, so much of the payment received by a taxpayer under the approved early retirement scheme that exceeds the amount that ordinarily would have been received on voluntary resignation or retirement is an approved early retirement scheme payment (that is, qualifies for concessional tax treatment).

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 ITAA 1936):

- 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 were not at arm's length (for example, because they are related in some way) the amount of the payment does not exceed what would reasonably be expected to have been paid to the taxpayer if they had been 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 the 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 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. By virtue of section 27CB of the ITAA 1936, 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 ("tax-free amount").

48. The tax-free amount of an approved early retirement scheme is calculated in accordance with subsection 27A(19) of the ITAA 1936. For the year ending 30 June 2002, the tax-free amount is \$5 295 plus \$2 648 for each whole year of completed employment service to which the approved early retirement scheme relates. Please note that 6 months, 8 months or even 11 months does not constitute a whole year for the purposes of this calculation. The \$5 295 and \$2 648 limits will be indexed annually in line with increases in average weekly ordinary times earnings (AWOTE).

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 subject to the provisions of the superannuation surcharge legislation, whether it is taken in cash or rolled-over.

52. The following payment qualifies as an approved early retirement scheme payment and is exempt from tax within the limits described in paragraph 45:

- two weeks pay per completed year of service on a pro-rata basis.

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

Detailed contents list

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

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Commissioner of Taxation

18 July 2001

Previous draft:

Not previously issued in draft form

- ITAA 1936 27E(1)
- 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)

Related Rulings/Determinations:

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 payment components

- 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)(b)(v)
- ITAA 1936 27E(1)(b)(vi)
- ITAA 1936 27E(1)(c)
- ITAA 1936 27E(2)
- ITAA 1936 27E(4)
- ITAA 1936 27E(5)

Legislative references:

- ITAA 1936 27A(1)
 - ITAA 1936 27A(19)
 - ITAA 1936 27CB
 - ITAA 1936 27E
-

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