CR 2001/31 - Income tax: Approved Early Retirement Scheme - Queensland University of Technology

Class Ruling
Income tax: Approved Early Retirement Scheme – Queensland University of Technology

Contents Para

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:

- all employees of the Queensland University of Technology (QUT) with an ongoing appointment who are under 65,

and receive a payment under the arrangement described below in paragraphs 10 to 31.

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 31 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(b) this Ruling may be withdrawn or modified.

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 94/20).

Withdrawal

9. This Ruling is withdrawn and ceases to have effect after 30 June 2002.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.

Arrangement

The Scheme

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 the Human Resources department of QUT dated 3 May 2001;
- record of telephone conversation with a representative of QUT on 6 July 2001; and
- facsimile from the Human Resources department of QUT dated 10 July 2001.

11. The evolving nature of higher education within Australia places significant demands on institutions to remain autonomous and flexible within an extremely competitive and volatile environment.

12. Government funding to QUT has been subject to real reductions since 1997, with cuts of 1% in 1997, 3% in 1998 and a further 2% in 1999 imposed by the Commonwealth Government.

13. In addition to this, new Commonwealth funding regimes such as the Research White Paper, which will apply from 2002, will tie future funding for Research and Research training activities to performance, within the increasingly competitive higher education market.

14. Against this framework, QUT has met the market with recent enterprise bargaining agreements, providing salary increases of 12.25% over the 1999 to 2003 timeframe for its academic and general staff.

15. QUT has identified a priority need to increase its earned income capacities and to rationalise its existing service delivery mechanisms to fund not only these salary increases, but also the range of other (generally non-labour) cost imposts brought to account in recent years.

16. The efficiency and productivity of QUT's workforce, which is the major consumer of university resources, will be of paramount concern in this exercise.

17. Within this funding environment, the demand for courses continues to change as does the required modes of delivery, particularly with advances in information technology. These changes

require changes in the skills profile in a number of areas of the University.

18. QUT has implemented a variety of strategies to assist in its management of these changes, which have also aimed to maintain industrial harmony. Such processes have included not replacing staff who retire/resign, implementation of a workforce planning strategy, efforts to streamline major processes to enhance efficiency, staff training in effective workload management as well as professional development, introduction of a Workplace Change Management policy and efforts to secure funding from alternative sources such as full fee paying students.

19. Despite these efforts, the University is unable to sustain its required level of service with its current and anticipated future income and continues to require staff with different skill profiles.

20. The University does not wish to resort to redundancies preferring to manage the situation in a more industrially harmonious manner. QUT therefore wishes to offer a Voluntary Early Retirement Scheme to staff as part of an overall strategy of realignment of QUT's resources and skill requirements allowing the University to continue to meet its service requirements in light of the current funding environment.

21. The provisions of the scheme are as follows:

- the scheme is available to all staff members with an ongoing appointment provided they are under 65;
- no member of staff can be compelled to retire early under the scheme;
- any early retirement under the scheme is subject to management approval by the Vice-Chancellor on the basis of the need to rationalise and re-organise operations;
- the voluntary early retirement benefit payable to staff members whose early retirement is approved will be a lump sum of two weeks salary for each completed year of service with QUT or its predecessor institutions, with a maximum payment of 52 weeks salary; and
- successful applicants will not normally be re-employed by the University and will not be re-employed to perform any component of their current position.

22. The following enterprise agreements apply to the staff at QUT:

- *QUT Enterprise Bargaining Agreement (General Staff) 2000-2003*;

- *QUT Enterprise Bargaining Agreement (Academic Staff) 2000-2003;*
- *Certified Agreement (Senior Staff) 1999-2001.*

23. The above agreements prevail over all awards.

24. There is no compulsory retirement age for employees of QUT.

Payments made under the Scheme

25. For a payment made under the above-mentioned scheme to qualify as an approved early retirement scheme, 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.

26. 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.

27. The payment must be made otherwise than from a superannuation fund.

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

29. 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.

30. Where the employee and employer are not dealing with each other at arm's length, the payment does not exceed what would have been paid to the employee had they been dealing with each other at arm's length.

31. 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

32. QUT's early retirement scheme for its staff is an approved early retirement scheme for the purposes of section 27E of *the Income Tax Assessment Act 1936.*

33. 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

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

35. 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.

36. 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.

37. 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).

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

- all staff employed by QUT with an ongoing appointment provided they are under 65.

39. This class of employees comes within subparagraph 27E(1)(a)(i). Accordingly, the first requirement for a scheme to be approved as an early retirement scheme has been satisfied.

40. It is noted that the Vice-Chancellor, in his capacity as the Chief Executive Officer of QUT, has a limited right of veto in cases where the approval of an application would result in the loss of key personnel who cannot readily be replaced, and where loss would impair the efficiency of the University's operations. In accordance with 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.

41. 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).

42. The purposes of the scheme are described above at paragraphs 11 to 20 of this ruling. The proposed scheme meets the requirements set out in subparagraphs 27E(1)(b)(v) and (vi); accordingly, the second condition for approval has been met.

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

43. The scheme is proposed to operate from the date of notification of the ruling in the Commonwealth of Australia Gazette until 30 June 2002. The scheme will be in operation for approximately 12 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 dealing with each other at arm's length, the amount of the payment does not exceed what would reasonably be expected to have been paid to the taxpayer if they had 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 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 taxed under 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 48 of this Ruling:

- two weeks salary for each completed year of service with QUT or its predecessor institutions, with a maximum payment of 52 weeks salary.

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:

Commissioner of Taxation
18 July 2001

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

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

Subject references:

- approved Early Retirement scheme payments;
- eligible Termination Payments

Legislative references:

- ITAA 1936 27A(1)
- ITAA 1936 27A(19)
- ITAA 1936 27CB
- 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)(b)(v)
- ITAA 1936 27E(1)(b)(vi)
- ITAA 1936 27E(1)(c)
- ITAA 1936 27E(4)
- ITAA 1936 27E(5)

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