



CR 2001/40 - Income tax: Approved Early Retirement Scheme - Victorian Police Department

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 This document has changed over time. This is a consolidated version of the ruling which was published on *29 August 2001*



Class Ruling

Income tax: Approved Early Retirement Scheme – Victorian Police Department

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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:

- PAO-5 employees within the Information Management Department (IMD) of Victoria Police

and 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.

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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- (b) this Ruling may be withdrawn or modified.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 29 August 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 31 January 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

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 Development Department of Victoria Police dated 18 June 2001;
- record of telephone conversation with a representative of the Human Resources Department of Victoria Police on 29 June 2001;
- facsimile from the Human Resources Development Department of Victoria Police dated 5 July 2001;
- record of telephone conversation with a representative of the Human Resources Department of Victoria Police on 24 July 2001; and
- record of telephone conversation with a representative of the Human Resources Department of Victoria Police on 2 August 2001.

11. In July 2000, Victoria Police engaged consultants to review the IT Stewardship Group of the Information Management Department (IMD) to clarify contracted deliverables under the existing IT services contract and identify opportunities for improvement in the contract management role within the force.

12. As a result, a significant restructure was undertaken and is now near completion.

13. It is anticipated that at least four PAO-5 positions will be significantly affected by this restructure. It is the intention of Victoria Police to offer Voluntary Departure Packages (VDPs) to all affected PAO-5 employees in the IT Stewardship Group.

14. The Department intends to approve up to a maximum of four VDPs. If less than four expressions of interest are received, all requests will be approved without veto. If more than four expressions are received, the Department has a limited right of veto.

15. All VDP payments and conditions will be in accordance with the current Victorian Government's guidelines.

16. To be eligible to express interest in a VDP, employees must meet the following criteria:

- be less than 65 years of age;
- be on the payroll and not on any form of paid leave;
- not be in receipt of non-medical work cover payments; and

- be employed on an open-ended and continuing basis.

17. All IMD staff are employed in accordance with the *Public Sector Management & Employment Act 1998* (Vic.).

18. It is anticipated that this VDP offer will be made to IMD employees as soon as Australian Tax Office (ATO) approval is granted.

19. The offer of a VDP to IMD employees will be available for approximately six months from the date of approval of the scheme. Anticipated departure dates would be arranged as soon as possible following the employee's acceptance.

20. There is no mandatory retirement age for employees at Victoria Police. However, staff reaching the age of 55 can voluntarily retire at anytime.

21. None of the affected employees of the IT Stewardship Group have attained the age of 55, therefore early retirement is not an option.

22. The benefit payable will comprise:

- a flat payment of 4 weeks pay at the employee's substantive rate of ordinary time pay immediately before resignation;
- two weeks pay per year of service to a maximum of fifteen years (30 weeks pay); and
- a lump sum voluntary departure incentive of up to \$10,000.

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 satisfied. Please 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 (ETP) 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 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.

28. 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.

29. 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

30. The early retirement scheme offered by Victoria Police to the PAO-5 employees of the IT Stewardship Group in the Information Management Department is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

31. 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 payment in relation to the taxpayer.

Explanations

32. Where a scheme satisfies the requirements of section 27E of the ITAA 1936, 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 outlines the requirements for an approved early retirement scheme under section 27E.

34. 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

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 employees to whom the scheme is proposed to be offered are:

- PAO-5 staff within the IT Stewardship Group of the Information Management Department of Victoria Police.

37. This class of employees does not come within any of subparagraphs 27E(1)(a)(i) to (iv), therefore it must be considered under subparagraph 27(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 employer. It is therefore considered that these employees meet the requirements of an approved class of employees for the purposes of subparagraph 27E(1)(a)(v).

38. It is noted that Victoria Police has a limited right of veto which is outlined under the terms and conditions of the scheme. 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.

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 purpose of the scheme is described in paragraphs 11 to 13 of this Ruling. The proposed scheme meets the requirements set out in subparagraphs 27E(1)(b)(iii), (iv) and (vi); accordingly the second condition for approval has been met.

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

41. The scheme is proposed to operate from the date of notification of the ruling in the Commonwealth of Australia Gazette to 31 January 2002.

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

Other relevant information

43. Under section 27E, 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).

44. 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; and
- 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

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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.

45. 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.

46. 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 limit will be exempt from income tax and called the “tax-free amount”.

47. 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

48. The total of the following payments qualify as an approved early retirement scheme payment:

- the flat payment of 4 weeks pay at the employee’s substantive rate of ordinary time pay immediately before resignation;
- two weeks pay per year of service to a maximum of fifteen years (30 weeks pay); and
- the lump sum voluntary departure incentive of up to \$10 000.

49. The total of the payments described in the previous paragraph will be measured against the limit calculated in accordance with paragraph 47 to determine the “tax-free amount.”

50. 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.

51. 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.

52. 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.

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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Previous draft:

Not previously issued in draft form

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

Legislative references:

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

- ITAA 1936 27E(1)(a)
- 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)(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)

ATO References

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