# *CR 2001/44 - Income tax: Approved Early Retirement Scheme - University of Queensland*

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This document has changed over time. This is a consolidated version of the ruling which was published on *31 August 2001*

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

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* ('ITAA 1936').

### Class of persons

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

- academic staff members, from Professor to Associate Lecturer in the Faculty of Biological and Chemical Sciences and the Faculty of Natural Resources, Agriculture and Veterinary Sciences, aged 55 to 63 who have completed at least 10 years continuous service with the University of Queensland;
- general staff members from Higher Education Worker (HEW) Level 1 to Level 10 in the Faculty of Biological and Chemical Sciences and the Faculty of Natural Resources, Agriculture and Veterinary Sciences, aged 55 to 63 who have completed at least 10 years continuous service with the University of Queensland,

and who 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.

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# Date of effect

8. This Ruling applies from 31 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 December 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

**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 University of Queensland dated 1 May 2001;
- record of telephone conversation with a representative of the University of Queensland dated 15 June 2001;
- correspondence from the University of Queensland dated 15 June 2001;
- record of telephone conversation with a representative of the University of Queensland dated 31 July 2001;
- correspondence from the University of Queensland dated 31 July 2001;
- record of telephone conversation with a representative of the University of Queensland dated 30 August 2001;
- correspondence to the University of Queensland dated 30 August 2001.

11. The University of Queensland is seeking the Commissioner of Taxation's approval to implement a voluntary early retirement scheme (VERS).

12. Two of the University's seven faculties are facing financial difficulties because of declining funding from the Federal Government combined with changes to the number of students enrolled in significant areas of the curricula of the faculties. The University operates a devolved budgeting system, under which funds received are allocated to "Budget Managers" who are required to operate within those clearly defined budgets.

13. The faculties in question are the Faculty of Biological & Chemicals Sciences and the Faculty of Natural Resources, Agriculture and Veterinary Sciences.

14. Each of the two mentioned faculties, has produced and circulated for consultation and public discussion among the staff of each faculty documents setting out the scope of the budgetary problems which they face and the extent of the re-structuring that is required. The documents detail the changes in academic curriculum and research concentration required in each faculty, as well as the relocation of some activities from one geographical site to another (e.g., the large animal treatment facilities are to be shifted from Pinjarra to Gatton).

15. The purpose of the proposed VERS is to offer staff in the defined age group the opportunity to retire early, in order to reduce the number of employees, using voluntary means where possible, so that involuntary retrenchments will be lessened or avoided completely.

16. Two class of employees are envisaged for the VERS:

- academic staff members, from Professor to Associate Lecturer in the Faculty of Biological and Chemical Sciences and the Faculty of Natural Resources, Agriculture and Veterinary Sciences, aged 55 to 63 who have completed at least 10 years continuous service with the University;
- general staff members from Higher Education Worker (HEW) Level 1 to Level 10 in the two faculties in question, aged 55 to 63 who have completed at least 10 years continuous service with the University.

17. There are 69 academic staff and 59 general staff in total in the two faculties in the target age group. The total staff numbers in the two faculties are 518 academic staff and 566 general staff. The numbers of staff members who might be eligible for VERS are such that a significant number of the proposed staff reductions is expected to be achieved from acceptors under the proposed scheme.

18. It is proposed that the scheme be open to staff from 31 August 2001 until 31 December 2001, with a view to ensuring that departing staff have the opportunity to leave the University before the end of December 2001.

19. Offers of VERS will be made in writing to all staff in the two classes outlined above.

20. The amounts to be paid out to staff when their positions are made redundant are specified in the University's enterprise agreements. The payments to academic staff are in the *University of Queensland's Enterprise Agreement (Academic Staff) 2000,* clause 10.11. The payments for general staff are included in the *University of Queensland's Enterprise Agreement (General Staff) 1999*, clauses 9.4.3 and 9.4.6. Payments under the VERS will be the same as set out in those clauses.

21. Academic staff of the University of Queensland who are paid a VERS package may choose between a notional calculation for a retrenchment payment or a voluntary separation payment, whichever will provide the person with the maximum benefit.

For retrenchment payments the calculation is:

- 12 months notional salary less notional tax; plus
- 8 weeks severance payment less notional tax; plus
- pay in lieu of notice period less notional tax; plus
- actual tax payable.

For voluntary separation payments the calculation is:

- severance pay at the rate of two weeks pay for each year of service less notional tax up to a maximum of 52 weeks; plus
- six months notional salary less notional tax; plus
- actual tax payable.

22. Employees who are academic staff of the University of Queensland will also receive the following payments from the University of Queensland but they do not form part of the approved early retirement scheme payment:

- pro-rata payment of long service leave entitlements.

23. The VERS package to be paid to employees who are general staff of the University of Queensland and accept voluntary retirement as a result of the early retirement scheme is as follows:

- five weeks payment in lieu of notice; and
- two weeks pay for each completed year of service subject to a minimum of four weeks and a maximum of 52 weeks. Pro-rata payments will be made for any years in which service was not full-time.

24. Employees who are general staff of the University of Queensland will also receive the following payments from the University of Queensland but they do not form part of the approved early retirement scheme payment:

- pro-rata payment of long service leave entitlements.

**Payments made under the Scheme**

25. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the following conditions must be met. Please 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 not be made from an eligible superannuation fund.

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

29. 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.

30. 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.

31. 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

32. The voluntary early retirement scheme offered by the University of Queensland is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

33. Accordingly, so much of the eligible termination payment (ETP) as 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

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 sets out guidelines on the application of section 27E.

36. 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***

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:

- academic staff members, from Professor to associate Lecturer in the Faculty of Biological and Chemical Sciences and the Faculty of Natural Resources, Agriculture and Veterinary Sciences, aged 55 to 63 who have completed at least 10 years continuous service with the University;
- general staff members from Higher Education Worker (HEW) Level 1 to Level 10 in the two faculties in question, aged 55 to 63 who have completed at least 10 years continuous service with the University.

39. This class of employees does not come within any subparagraphs 27E(1)(a)(i) to (iv), therefore it must be considered under subparagraph 27E(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 operations 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).

40. It is noted, however, that the University of Queensland retains a limited right of veto to be applied to applications by key personnel who cannot be readily be replaced and whose loss would impair the efficiency of the University of Queensland's business operations. Further to this the University of Queensland retains a limited right of veto to applications if there is a lack of availability of funds. In those cases, applications will be accepted in the order they are received until all available funds are utilised. 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 at paragraphs 12 to 15 this ruling. The proposed scheme meets the requirements set out in subparagraphs 27E(1)(b)(iii), 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 will remain open from 31 August 2001 to the end of December 2001. Approval of the scheme was given prior to this date, therefore the third condition is satisfied.

44. The scheme will be in operation for approximately four months which is within the period recommended in TR 94/12.

***Other relevant information***

45. 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.

46. 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 ETP 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.

47. 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.'

48. 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."

49. 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.

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

For academic staff :

- the final amount paid in accordance with paragraph 21 of this Ruling.

For general staff:

- the total amount paid in accordance with paragraph 23 of this Ruling.

51. The payments described in the previous paragraph will be measured against the limit calculated in accordance with paragraph 48 to determine the "tax-free amount".

52. The tax-free amount will:

- not be an 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.

53. 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.

54. 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.

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

## Detailed contents list

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

**Commissioner of Taxation**
12 September 2001

*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 payments components

*Legislative references:*
- ITAA 1936 27A(1)
- ITAA 1936 27E
- ITAA 1936 27E(1)(a)
- ITAA 1936 27E(1)(b)
- ITAA 1936 27E(1)(c)
- 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)(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(4)
- ITAA 1936 27E(5)
- TAA 1953 Part IVAAA

ATO References
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