



CR 2001/45 - Income tax: Approved Early Retirement Scheme - Office of Gambling Regulation (Victoria)

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Class Ruling

Income tax: Approved Early Retirement Scheme – Office of Gambling Regulation (Victoria)

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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 investigators and senior investigators; and
- all staff of the Commercial Licensing and Monitoring Unit; and
- all staff of the Gambling Operations and Audit Branch,

in the Office of Gambling Regulation (Victoria) who receive a payment under the Voluntary Departure Package described below in paragraphs 10 to 22.

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 22 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 - (b) this Ruling may be withdrawn or modified.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 1 June 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 Office of Gambling Regulation on 26 April 2001;
- e-mail from the Office of Gambling Regulation on 12 August 2001;
- facsimile from the Office of Gambling Regulation on 12 August 2001;
- e-mail from the Office of Gambling Regulation on 13 August 2001;
- record of telephone conversation with a representative of the Office of Gambling Regulation on 13 August 2001.

11. The Office of Gambling Regulation is seeking the Commissioner of Taxation's approval to implement a Voluntary Departure Package under section 27E of the ITAA 1936.

12. There are 3 main factors which have contributed to the decision to propose a review of the approach taken by the Office of Gambling Regulation in fulfilling its role as a gambling regulator in Victoria:

- implementation of legislative changes which affect the way services undertaken in certain Branches of the organisation are delivered;
- a review by a consultancy firm recommending a move to a risk management strategy which matches a level of resource appropriate to the level of risk associated with the activity being regulated; and
- ongoing review of the efficiency of operations as a part of the normal budget and business planning process.

13. 13. There are staffing changes as a result of the implementation of proposed strategies in paragraph 12.
14. The scheme is proposed to operate for a period from 1 June 2001 to 31 December 2001.
15. The payment made under the Voluntary Departure Package is:
- 4 weeks pay in lieu of notice; and
 - a lump sum voluntary departure incentive of up to \$10,000 (for a full time employee); and
 - 2 weeks pay per year of continuous service up to a maximum of 15 years.

Payments made under the Scheme

16. 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.
17. 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.
18. The payment must not be made from an eligible superannuation fund.
19. The payment must not be made in lieu of superannuation benefits.
20. 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 employment because of the taxpayer attaining a certain age or completing a certain period of service.
21. 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.
22. 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

23. The Voluntary Departure Package offered by the Office of Gambling Regulation (Victoria) is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

24. 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

25. Where a scheme satisfies the requirements of section 27E of the ITAA 1936 that scheme will be an ‘approved early retirement scheme.’

26. 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.

27. 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

28. 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).

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

- all investigators and senior investigators;
- all staff of the Commercial Licensing and Monitoring Unit; and
- all staff of the Gambling Operations and Audit Branch,

in the Office of Gambling Regulation (Victoria).

30. 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).

31. It is noted, however that the Office of Gambling Regulation retains a limited right of veto to be applied to applications by key personnel who cannot be readily replaced and whose loss would impair the efficiency of the Office of Gambling Regulation's business operations. Also the Office of Gambling Regulation 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

32. 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).

33. The purposes of the scheme are described at paragraphs 12 to 13 of this Ruling. In approving the objectives of the scheme, although the nature of the rationalisation or re-organisation of the employer's operations does not fit within one of the specific objectives identified in subparagraphs 27E(1)(b)(i) to (v), the Commissioner has had regard to the fact that the re-organisation is being implemented with a view to a restructuring of the work force or operations of the employer. It is therefore considered that the scheme is to be implemented by the

employer with a view to rationalising or re-organising the operations of the employer for the purposes of subparagraph 27E(1)(b)(vi).

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

34. The scheme is proposed to operate for a period from 1 June 2001 to 31 December 2001. Since the implementation date has already passed, the scheme fails to meet the requirement of paragraph 27E(1)(c).

35. 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...”

36. The application for approval was received on 17 May 2001. 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).

37. The scheme will be in operation for 7 months which is within the period recommended in TR 94/12.

Other relevant information

38. 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.

39. 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;

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- 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.

40. 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.'

41. 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."

42. For the year ended 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. The tax free amount for the year ending 30 June 2002 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. The \$5 295 and \$2 648 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

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

- 4 weeks pay in lieu of notice; and
- a lump sum voluntary departure incentive of up to \$10,000 (for a full time employee); and
- 2 weeks pay per year of continuous service up to a maximum of 15 years.

44. The total of the payments described in the previous paragraph will be measured against the limit calculated in accordance with paragraph 42 to determine the “tax-free amount”.

45. 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.

46. 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.

47. 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.

48. 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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Commissioner of Taxation

12 September 2001

<i>Previous draft:</i>	- ITAA 1936 27E(1)(b)
Not previously issued in draft form	- ITAA 1936 27E(1)(c)
	- ITAA 1936 27E(1)(a)(i)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 27E(1)(a)(ii)
CR 2001/1; TR 92/1; TR 92/20;	- ITAA 1936 27E(1)(a)(iii)
TR 97/16; TR 94/12; TR 94/12E	- ITAA 1936 27E(1)(a)(iv)
	- ITAA 1936 27E(1)(a)(v)
<i>Subject references</i>	- ITAA 1936 27E(1)(b)(i)
- Approved early retirement scheme payments;	- ITAA 1936 27E(1)(b)(ii)
- eligible termination payments	- ITAA 1936 27E(1)(b)(iii)
- eligible termination payments components	- ITAA 1936 27E(1)(b)(iv)
	- ITAA 1936 27E(1)(b)(v)
	- ITAA 1936 27E(1)(b)(vi)
	- ITAA 1936 27E(2)
<i>Legislative references:</i>	- ITAA 1936 27E(4)
- ITAA 1936 27A(1)	- ITAA 1936 27E(5)
- ITAA 1936 27E	- TAA 1953 Part IVA
- ITAA 1936 27E(1)	
- ITAA 1936 27E(1)(a)	

ATO References

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