



# ***CR 2001/52 - Income tax: Approved Early Retirement Scheme - Department of Infrastructure***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *24 October 2001*



## **Class Ruling**

### **Income tax: Approved Early Retirement Scheme – Department of Infrastructure**

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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 is

- all employees of the Department of Infrastructure in Victoria whose skills do not match those required by the Department,

and receive a payment under the Voluntary Departure Package described below in paragraphs 10 to 25.

#### **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 25 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- (b) this Ruling may be withdrawn or modified.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

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8. This Ruling applies from 24 October 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

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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**

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### **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 Department of Infrastructure (DOI) dated 11 July 2001;
- records of telephone conversations with a representative of the DOI on 16 and 28 August 2001.

11. The DOI, currently employing 730 staff in Melbourne and seven regional locations, is seeking approval for an early retirement scheme under section 27E of the ITAA 1936.

12. As a result of corporate and business planning processes for the 2002 financial year, the DOI is realigning its organisational capabilities and intends to call for expressions of interest in a Voluntary Departure Package (VDP) from all its staff.

13. In the State Government's 2001/2002 budget, provisions were made for substantial investment in new infrastructure projects and public transport services. Part of these provisions include an allocation of a further \$1 billion to the Linking Victoria program to upgrade the State's roads, ports and rail network.

14. Some of the new long term projects undertaken will be in partnership with the private sector and require appropriately skilled and experienced personnel with high level commercial backgrounds in financing and large capital works management.

15. Recruitment from outside the Victorian Public Service, as was the case with the DOI's Rail Projects Group, may be required for projects where key competencies to fill various roles are not easily transferable from one area of the DOI to another.

16. Other areas of change for the DOI include an increased emphasis on high level economic analysis of infrastructure investment and enhancement of the public transport network's support of the franchised public transport system.

17. In addition to realigning its skill base the DOI will continue to develop and utilise its Information Technology capabilities to allow sophisticated data modelling and analysis activities.

18. The DOI expects 50 positions, department wide, to be affected by its re-profiling of staff resources and realignment of organisational capabilities.
  19. The offer of early retirement under the VDP will commence on 24 October 2001 and will be open for 8 months and 8 days until 30 June 2002.
  20. The scheme is set down by the Victorian Government under its Voluntary Departure Package and consists of payments as follows:
    - (a) 4 weeks pay in lieu of notice;
    - (b) 2 weeks pay for each year of service up to 15 years; and
    - (c) lump sum incentive of \$10 000.
- Payments (b) and (c) will be pro rata payments for employees who work part time.
21. Employees of the DOI are employed under the *Victorian Public Service ( Non Executive Staff - Victoria ) Agreement 2000* and are able to retire as early as 55 years of age with no limit on how long they can continue beyond that time.
  22. The VDP is not available to employees aged 65 years or over.
  23. Management will exercise reasonable discretion over which employees are provided with a VDP based on the operational requirements of the organisation and availability of funds. Employees are not compelled to accept VDP offers.
  24. There is a strict policy of no re-employment within the Victorian Government sector for a period of three years upon accepting a VDP.
  25. There is no agreement at the date of termination between a VDP recipient and the DOI or the DOI and another to re-employ a VDP recipient after the date of termination.

## **Payments made under the Scheme**

26. 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.
27. 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.

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

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

30. 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.

31. 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.

32. 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**

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33. The Voluntary Departure Package offered by the Department of Infrastructure is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

34. 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**

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

36. 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.

37. 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***

38. 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).

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

- all employees of the Department of Infrastructure in Victoria whose skills do not match those required by the Department

40. This class of employees is considered to have met the requirements of subparagraph 27E(1)(a)(i), that is, all employees of the employer.

41. It is noted, however, the DOI will retain a right of veto over which employees are provided with a VDP based on the operational requirements of the organisation and availability of funds. 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***

42. 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).

43. The purposes of the scheme are described at paragraphs 12, 14 and 15 of this Ruling. The proposed scheme meets the requirements

set out in subparagraph 27E(1)(b)(i); accordingly the second condition for approval has been met.

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

44. Application for approval of the scheme dated 11 July 2001, was received in this office on 16 July 2001. The scheme is proposed to operate for a period from 24 October 2001 to 30 June 2002. The approval date of the scheme will be the date of publication of this Ruling and will be implemented by the organisation from 24 October 2001 after receiving written approval of the scheme. The third condition is therefore satisfied.

45. The scheme will be in operation for 8 months and 8 days which is within the period recommended in TR 94/12.

***Other relevant information***

46. 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.

47. 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.

48. 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’.

49. 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”.

50. 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.

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

- (a) 4 weeks pay in lieu of notice;
- (b) 2 weeks pay for each year of service up to 15 years; and
- (c) lump sum incentive of \$10 000.

52. The total of the payments described in the previous paragraph will be measured against the limit calculated in accordance with paragraph 50 to determine the “tax-free amount”.

53. 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.

54. 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.

55. 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.

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

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**Commissioner of Taxation**

24 October 2001

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*Previous draft:*

Not previously issued in draft form

- ITAA 1936 27E(1)(a)

- ITAA 1936 27E(1)(b)

- ITAA 1936 27E(1)(c)

*Related Rulings/Determinations:*

CR 2001/1; TR 92/1; TR 92/20;

TR 94/12; TR 97/16

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

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

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

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

*Subject references*

- Approved early retirement scheme payments;

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

- ITAA 1936 27E(1)(b)(i)

- 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)

*Legislative references:*

- TAA 1953 Part IVAAA

- ITAA 1936 27E(4)

- ITAA 1936 27A(1)

- ITAA 1936 27E(5)

- ITAA 1936 27E

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ATO References

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