


CR 2001/71 - Income tax: Approved Early Retirement Scheme - TAFE Queensland

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 This document has changed over time. This is a consolidated version of the ruling which was published on *28 November 2001*



Class Ruling

Income tax: Approved Early Retirement Scheme – TAFE Queensland

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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 Queensland public service employees engaged in 13 nominated TAFE Institutes and employed on tenure, who receive a payment under the arrangement described below in paragraphs 11 to 29.

4. For the purposes of this Ruling, the 13 nominated Institutes of TAFE Queensland are:

- Barrier Reef;
- Brisbane;
- Central Queensland;
- Cooloola/Sunshine Coast;
- Logan;
- Moreton;

- Mount Isa;
- North Point;
- Open Learning Institute;
- Southbank;
- Southern Queensland;
- Tropical North; and
- Wide Bay.

Qualifications

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

6. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 11 to 29 is carried out in accordance with the details of the arrangement provided in this Ruling.

7. 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- (b) this Ruling may be withdrawn or modified.

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The Manager
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Date of effect

9. This Ruling applies from 28 November 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

10. 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

The Scheme

11. 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 dated 9 October 2001 from the Department of Employment and Training Queensland on behalf of TAFE Queensland;
- record of telephone conversation with a representative of the Department of Employment and Training Queensland on behalf of TAFE Queensland on 1 November 2001;
- record of telephone conversation with a representative of the Department of Employment and Training Queensland on behalf of TAFE Queensland on 14 November 2001.

12. The Department of Employment and Training Queensland is seeking approval for an early retirement scheme on behalf of TAFE Queensland.

13. The Department of Employment and Training Queensland has approval from Government to re-position TAFE Queensland as the public provider of vocational education and training in Queensland to more effectively deliver these services to the public of that State.

14. The Department of Employment and Training Queensland has advised that this re-positioning includes a re-alignment of the skills base so that it is future-focused in order to meet the demands of the rapidly changing labour market and the radical transformation taking place as business and industry compete in the global marketplace. As part of this re-positioning it is necessary to address the budget deficit.

15. The Department of Employment and Training Queensland has further advised that the intent is to develop a viable, dynamic, responsive and efficient public system of vocational education and training. This is critical if government is to maximise its investment in the State's skill base.

16. Thirteen of the sixteen Institutes in TAFE Queensland recorded a deficit for the 2000/01 financial year. It is in these institutes that a review has taken place of the current staff allocations in relation to service delivery demands. The names of the thirteen institutes are mentioned in paragraph 4.

17. The Voluntary Early Retirement Scheme (VERS) is implemented with a view to reorganising business operations in the thirteen institutes in TAFE Queensland where this has been identified as necessary if the Institute is to be placed on a sound financial footing.

18. This exercise has been necessary as it is intended to close, reduce or reallocate services in those areas that currently are not as efficient as they could be. This has occurred as a result of a reduction in service demand or interest in some teaching areas or a re-definition of the services to be provided at particular institutes to bring them into line with local and industry demand.

19. The primary consideration in this scheme is whether employees have the necessary skills in those teaching and allied areas to provide the training demanded by the public.

20. All Queensland public service employees engaged in the thirteen nominated TAFE Institutes and employed on tenure will be eligible to lodge expressions of interest in voluntary early retirement.

21. The VERS payment consists of a severance benefit of two weeks' pay per year of service and a proportionate amount for an incomplete year of eligible service paid at the employee's substantive appointed level (minimum four weeks, maximum 52 weeks).

22. The employees will also receive the following payments from TAFE Queensland but these do not form part of the approved early retirement scheme payment:

- accrued recreation leave;
- accrued long service leave for employees who have worked for at least one year, on the basis of 1.3 weeks

for each year of continuous service and a proportionate amount for an incomplete year of service.

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 met. 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 employment because of the taxpayer attaining a certain age or completing a certain period of service.
28. 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.
29. 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

30. The Voluntary Early Retirement Scheme offered by TAFE Queensland 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) 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

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 sets out guidelines on the application of section 27E.

34. 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:

- the scheme must be offered to all employees within a class identified by the employer (paragraph 27E(1)(a));
- 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
- the scheme must be approved by the Commissioner prior to its implementation (paragraph 27E(1)(c)).’

These three conditions are described below in paragraphs 35 to 42.

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 is:

- all Queensland public service employees engaged in 13 nominated TAFE Institutes and employed on tenure.

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 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).

38. It is noted, however, TAFE Queensland 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 TAFE Queensland's business operations. 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 purposes of the scheme is described at paragraphs 14 to 19 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

41. The scheme is proposed to operate for the period from the date this Ruling is notified in the Commonwealth Gazette to 31 January 2002. The approval date of the scheme will be the date of publication of this Ruling and will be implemented by the organisation immediately after receiving written approval of the scheme. The third condition is therefore satisfied.

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

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 would ordinarily have been received on voluntary resignation or retirement is an approved early retirement scheme payment.

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 Act):

- the payment must be an eligible termination payment (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.

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. 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 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.

48. The following payment qualifies as an approved early retirement scheme payment:

- a severance benefit of two weeks' pay per year of service and a proportionate amount for an incomplete year of eligible service paid at the employee's substantive appointed level (minimum four weeks, maximum 52 weeks).

49. The payment 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 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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Commissioner of Taxation

28 November 2001

<i>Previous draft:</i>	- ITAA 1936 27E(1)(a)
Not previously issued in draft form	- ITAA 1936 27E(1)(b)
	- ITAA 1936 27E(1)(c)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 27E(1)(a)(i)
CR 2001/1; TR 92/1; TR 92/20;	- ITAA 1936 27E(1)(a)(ii)
TR 94/12; TR 97/16	- ITAA 1936 27E(1)(a)(iii)
	- 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)
<i>Legislative references:</i>	- ITAA 1936 27E(4)
- TAA 1953 Part IVAAA	- ITAA 1936 27E(5)
- ITAA 1936 27A(1)	
- ITAA 1936 27E	

ATO References

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