


CR 2002/76 - Income tax: Approved Early Retirement Scheme - Victoria University of Technology

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Class Ruling

Income tax: Approved Early Retirement Scheme – Victoria University of Technology

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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.
2. Broadly, this Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for persons receiving payments under the scheme. There are many conditions attached to this Ruling and readers should be careful to ensure that these conditions are met before relying on this Ruling.

Tax law(s)

3. The tax laws dealt with in this Ruling are sections 27E and 27CB of the *Income Tax Assessment Act 1936* (‘ITAA 1936’).

Class of persons

4. The class of persons to which this Ruling applies is Academic and general staff employed in the Faculty of Engineering and Science who are employed against the Department of Education, Science and Training operating grant in a continuing full time or part time capacity; and who receive a payment under the arrangement described below in paragraphs 13 to 27.
5. The scheme does not apply to staff employed against grants, full fee income, Victorian Government grants, or whose salary is

either supplemented or totally dependent on a commercial undertaking.

Qualifications

6. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
7. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 31 to 33 in this Ruling.
8. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:
 - (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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10. A copy of this Ruling must be given to all employees eligible to participate in the approved early retirement scheme.

Date of effect

11. This Ruling applies from 7 October 2002 unless and until it is withdrawn (see paragraph 12 of this Ruling). However, this 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 this Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore this Ruling applies to the extent that the relevant tax laws are not amended.

Withdrawal

12. This Ruling is withdrawn and ceases to have effect after 10 January 2003. 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

13. 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 a representative of the Victoria University of Technology dated 29 August 2002.
- Telephone conversation with a representative of the Victoria University of Technology.

14. Victoria University of Technology is seeking approval for an early retirement scheme known as the Victoria University Voluntary Departure Scheme (VDS).

15. Victoria University of Technology, as part of its strategic directions review, is rationalising and re-aligning its staff skill base to achieve both economy savings and to ensure that it is 'future focused' to meet the constantly changing demands of industry, business and the market place. It also wishes to develop a viable, dynamic, and efficient education and research platform from which to base its future operations.

16. As part of the strategic direction review it will be necessary to close, reduce or reallocate services attached to particular areas.

17. The Victoria University of Technology is proposing a Voluntary Departure Scheme which will be offered to academic and general staff employed in the organisational units listed in paragraph 4 of this Ruling.

18. The Victoria University of Technology reserves the right to exercise a reasonable discretion over which employees are provided

with an early retirement scheme payment based upon operational requirements and a corresponding requirement to retain employees with particular skills.

19. The following payments are made under the early retirement scheme:

- 4 weeks salary per year of service for the first 10 years of service (paid on a pro rata basis);
- 3 weeks salary per year of service for years of service in excess of 10 years (paid on a pro rata basis);
- these payments will be limited to a maximum total of 78 weeks of salary while a minimum basic benefit of 10 weeks will apply in all cases; and
- an additional benefit of 8 weeks salary will be paid to staff who agree to depart on or before 29 November 2002.

20. The Victoria University of Technology has advised that employees who receive a benefit under this scheme will not be re-employed by the University.

Payments made under the Scheme

21. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the conditions set out in paragraphs 22 to 27 must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

22. 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.

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

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

25. 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.

26. 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.

27. 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

28. The early retirement scheme offered by Victoria University Voluntary Departure Scheme is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936*.

29. Accordingly, so much of the 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.

30. In addition, so much of the approved early retirement scheme payment as falls within the threshold calculated in accordance with subsection 27A(19) of the ITAA 1936 is non-assessable and is ignored in working out whether a capital gain has been made via the operation of section 27CB of the ITAA 1936.

Explanations

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

32. 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.

33. Paragraph 14 of Taxation Ruling 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

34. 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).

35. The class of employees to which the scheme is proposed to be offered is:

- all academic and general staff employed against the Department of Education, Science and Training operating grant in a full time or part time capacity and who work in the Faculty of Engineering and Science.

36. This class does not come within any subparagraphs of 27E(1)(a)(i) to (iv), therefore, it must be considered under subparagraph 27E(1)(a)(v), namely, all employees of the employer who constitutes 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).

37. It is noted, however, that Victoria University of Technology 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 Victoria University of Technology’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

38. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer by means of one or more of the objectives set out in subparagraphs 27E(1)(b)(i) to (vi).

39. The purpose of the scheme is detailed in paragraphs 15 and 16 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*

40. The scheme is proposed to operate from 7 October 2002 to 10 January 2003. Since the implementation date has already passed, the scheme fails to meet the requirement of paragraph 27E(1)(c).

41. 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 Taxation Ruling 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’

42. Based on the full circumstances of the application 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).

43. The scheme will be in operation for 3 months which is within the period recommended in Taxation Ruling TR 94/12.

44. The scheme will be in operation for approximately three months which is within the period recommended in paragraph 28 of Taxation Ruling 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 resignation or retirement 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 ITAA 1936):

- 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 limit will be exempt from income tax and called the 'tax-free amount'.

49. For the year ending 30 June 2003, the tax-free amount is limited to \$5,623 plus \$2,812 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 payment qualifies as an approved early retirement scheme payment:

- the amount received on termination calculated in accordance with paragraph 19.

51. To determine the 'tax free amount' the total of the payments described in paragraph 50 will be measured against the limit calculated in accordance with paragraph 49.

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.

Detailed contents list

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

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Commissioner of Taxation

 9 October 2002

<i>Previous draft:</i>	- ITAA 1936 27E(2)
Not previously released in draft form	- ITAA 1936 27E(1)(a)
	- ITAA 1936 27E(1)(b)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 27E(1)(c)
CR 2001/1; TR 92/1; TR92/20;	- ITAA 1936 27E(1)(a)(i)
TR 97/16; TR 94/12	- ITAA 1936 27E(1)(a)(ii)
	- ITAA 1936 27E(1)(a)(iii)
<i>Subject references:</i>	- ITAA 1936 27E(1)(a)(iv)
- approved early retirement scheme	- ITAA 1936 27E(1)(a)(v)
payments	- ITAA 1936 27E(1)(b)(i)
- eligible termination payments	- ITAA 1936 27E(1)(b)(ii)
- eligible termination payments	- ITAA 1936 27E(1)(b)(iii)
components	- ITAA 1936 27E(1)(b)(iv)
	- ITAA 1936 27E(1)(b)(v)
<i>Legislative references:</i>	- ITAA 1936 27E(1)(b)(vi)
- ITAA 1936 27A(1)	- ITAA 1936 27E(4)
- ITAA 1936 27A(19)	- ITAA 1936 27E(5)
- ITAA 1936 27CB	- TAA 1953 Part IVAAA
- ITAA 1936 27E	- Copyright Act 1968
- ITAA 1936 27E(1)	

ATO References

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