



CR 2004/115 - Income tax: Approved Early Retirement Scheme - NSW Business link

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 This document has changed over time. This is a consolidated version of the ruling which was published on *19 October 2004*



Class Ruling

Income tax: Approved Early Retirement Scheme – NSW Business link

Contents	Para
What this Class Ruling is about	1
Date of effect	10
Withdrawal	11
Arrangement	12
Ruling	29
Explanation	32
Detailed contents list	52

Preamble

*The number, subject heading, **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 all employees of NSW Businesslink who receive a payment under the arrangement described in paragraphs 12 to 28.

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 actually carried out is carried out in accordance with the arrangement described in paragraphs 12 to 28.

7. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- 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
- this Ruling may be withdrawn or modified

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

Date of effect

10. This Ruling applies from 19 October 2004 until it is withdrawn (see paragraph 11). 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

11. This Ruling is withdrawn and ceases to have effect after 30 June 2005. 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

12. The arrangement that is the subject of this 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 representatives for NSW Businesslink; and
- records of telephone conversations with representatives of NSW Businesslink.

13. NSW Businesslink is seeking approval for an early retirement scheme known as a Voluntary Redundancy Package (VRP).

14. NSW Businesslink was formed in 2002 to provide shared services to three client agencies namely Department of Ageing Disability and Home Care, Department of Housing and Department of Community Services. In recent months, NSW Businesslink has taken the first steps in implementing an integrated regional structure, which aims to provide a robust, flexible and responsive management and service delivery workforce across NSW.

15. A new model of regional service delivery has been proposed that will reduce the number of service locations from eleven offices to four in non-metropolitan NSW. NSW Businesslink will retain the offices at Lismore, Orange, Newcastle and Queanbeyan however they will close the offices at Charlestown, Armidale, Kempsey, Dubbo, Wagga Wagga, Coffs Harbour and Wollongong. Accordingly, non-metropolitan operational and support functions will be transferred to a regional service or head office at Liverpool.

16. All permanent employees of NSW Businesslink in non-metropolitan NSW will be offered early retirement.

17. The following employees will not be offered early retirement:

- employees engaged on a short term and/or casual basis or for a specific period;
- temporary employees with less than 12 months continuous service;
- temporary employees engaged for a specific time or specific project in excess of 12 months when the contract of employment has come to an end due to the expiry of time or the original project has been completed;
- apprentices at the conclusion of their apprenticeship or within a short period thereafter;

- employees on workers' compensation whose claim is based on compensation for termination (unless the agreement of their workers' compensation insurer is obtained to any separation payment being made) or others awaiting determination of claims against the employer for termination of services; and
 - employees in relation to whom action is in train to terminate their services.
18. Employees will have ten working days to accept the offer.
19. All employees who retire under the scheme will receive the payment and terminate employment before 1 August 2005.
20. The early retirement scheme payment consists of:
- four weeks notice or payment in lieu;
 - an additional one week's notice or pay in lieu for employees aged 45 years and over with 5 or more years of completed service;
 - severance pay at the rate of 3 weeks per year of continuous service with a maximum of 39 weeks, with pro-rata payments for incomplete years of service to be on a quarterly basis; and
 - Those employees who accept an offer of voluntary redundancy within two weeks of the offer being made, and terminate within the time nominated will be entitled to the following additional payments:
 - (i) Less than one year service: two weeks pay;
 - (ii) One year and less than two years service: four weeks pay;
 - (iii) Two years and less than three years service: six weeks pay; and
 - (iv) Three years service and over: eight weeks pay.
21. The employees will also receive the following payments but these do not form part of the approved early retirement scheme payment:
- the benefit allowable as a contributor to a retirement fund; and
 - pro-rata annual leave loading in respect of leave accrued at the date of termination.
22. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the conditions set out in paragraphs 23 to 28 must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

Payments made under the Scheme

23. 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.

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

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

26. 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.

27. 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.

28. At the termination time, there is no agreement in force between the employee and the employer or the employer and another person, to employ the employee after the date of termination.

Ruling

29. The early retirement scheme offered by NSW Businesslink is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

30. 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.

31. 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.

Explanation

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 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:

- (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)).

These three conditions are discussed below.

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 which the scheme is proposed to be offered is set out in paragraph 16.

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

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. Paragraphs 14 to 15 describe the nature of the rationalisation or re-organisation of NSW Businesslink's operations. The proposed scheme meets the requirements set out in subparagraph 27E(1)(b)(iii) accordingly the second condition for approval has been met.

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

40. The scheme is proposed to operate for a period from 19 October 2004 to 30 June 2005. Approval was granted prior to implementation therefore the third condition is satisfied.

41. The scheme will be in operation for approximately 9 months which is within the period recommended in TR 94/12.

Other relevant information

42. 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.

43. 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)):

- 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 employ the taxpayer after the date of termination.

44. 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'.

45. 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'.

46. For the year ending 30 June 2005, the tax-free amount is limited to \$6,194 plus \$3,097 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.

47. The total of the amount received on the termination of employment calculated in accordance with paragraph 20 qualifies as an approved early retirement scheme payment.

48. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 46 to determine the 'tax-free amount'.

49. 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.

50. Any payment in excess of this limit will be an ordinary ETP and split up into the pre-July 1983 and post-June 1983 (untaxed element) components. This ETP can be rolled-over.

51. 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

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

	Paragraph
What this Class Ruling is about	1
Tax law(s)	3
Class of persons	4
Qualifications	5
Date of effect	10
Withdrawal	11
Arrangement	12
The Scheme	12
Payments made under the Scheme	23
Ruling	29
Explanation	32
The scheme must be offered to all employees within a class identified by the employer	35
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 scheme must be approved by the Commissioner prior to its implementation	40
Other relevant information	42
Detailed contents list	52

Commissioner of Taxation

27 October 2004

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TR 94/12

Subject references:

- approved early retirement scheme payments
- eligible termination payments
- eligible termination payments components

Legislative references:

- ITAA 1936 27A(1)
- ITAA 1936 27A(19)
- ITAA 1936 27CB
- 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)

CR 2004/115

- 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)
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ATO references

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