



CR 2004/31 - Income tax: Approved Early Retirement Scheme - St Bede's College, Victoria

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

Class Ruling

Income tax: Approved Early Retirement Scheme – St Bede’s College, Victoria

Contents	Para
What this Class Ruling is about	1
Date of effect	10
Withdrawal	11
Arrangement	12
Ruling	29
Explanation	32
Detailed contents list	53

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 all employees of St Bede’s College 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 March 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 31 July 2004. 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 material change in the arrangement or in the class of persons involved 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 a representative of St Bede's College; and
- records of telephone conversations with a representative of St Bede's College.

13. St Bede's College is seeking approval for an early retirement scheme.

14. The school has implemented a number of upgrades and extensions to its administrative, teaching and teaching support computer systems culminating in the transfer of the school's Maze administrative software from an old DOS based version onto a new Windows platform.

15. The size and complexity of these systems requires all personnel involved in their use and support to remain abreast of recent developments and frequent changes. The school has found the volume and sophistication of the software and hardware has meant some of its administrative and systems support staff require extensive and costly training to gain the skills necessary to enable the school to gain the full benefits of these systems.

16. The school would like to offer early retirement to the older members of its workforce to enable a reorganisation of the workforce and to allow the employment of any required replacement employees who are already trained and skilled in the support and use of systems built on Windows based technology.

17. Early retirement will be offered to all employees in the Administration, Infrastructure and Computer Services divisions of St Bede's College, who are over 55 years of age and whose responsibilities include the daily software and hardware support to the student network, or the use of the Maze school administration system.

18. St Bede's College retains a limited right of veto to be applied to applications by key personnel who are essential to the on-going and future operations of the school.

19. Offers of early retirement will be made after approval of the scheme by the Commissioner. Employees will be asked to accept the offer within two months. Employees will terminate employment and receive the payment no later than two months after accepting the offer.

20. The early retirement scheme payment will comprise the following:

- 5 weeks pay in lieu of notice; plus
- A payment for a period of continuous service in accordance with the following scale:

Less than 1 year	Nil;
1 year but less than 2 years	5 weeks pay;
2 years but less than 3 years	8.75 weeks pay;
3 years but less than 4 years	12.5 weeks pay;
4 years but less than 5 years	15 weeks pay;
5 years but less than 6 years	17.5 weeks pay;
6 years but less than 7 years	20 weeks pay;
7 years and over	22.5 weeks pay;

where 'weeks pay' means the ordinary time rate of pay for the employee concerned.

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

- accrued unused long service leave and annual leave; and
- access to any accumulation of entitlements under the respective employee's superannuation scheme.

Payments made under the Scheme

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.

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 (e.g. 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 St Bede's College 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 all employees in the Administration, Infrastructure and Computer Services divisions of St Bede’s College, who are over 55 years of age and whose responsibilities include the daily software and hardware support to the student network, or the use of the Maze school administration system.

37. This class of employees is considered to have met the requirements of subparagraph 27E(1)(a)(iv), that is, all employees of the employer who have a particular occupational skill and who have attained a particular age.

38. It is noted, however, that St Bede’s College 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 St Bede's College's business operations. The limitation of the scheme in this way is acceptable to the Commissioner.

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 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).

40. Paragraphs 14 to 16 of this Ruling describe the nature of the rationalisation or re-organisation of St Bede's College's operations. The proposed scheme meets the requirements set out in subparagraph 27E(1)(b)(i); accordingly the second condition for approval has been met.

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

41. The scheme is proposed to operate for a period from 19 March 2004 until 31 July 2004. Approval was granted prior to implementation therefore the third condition is satisfied.

42. The scheme will be in operation for approximately 4 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)):

- 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 (e.g. 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.

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 2004, the tax-free amount is limited to \$5,882 plus \$2,941 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 \$5,882 and \$2,941 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

48. 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.

49. The total of the payments 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 1983 and post-June 1983 (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.

Detailed contents list

53. 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	22
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	39
The scheme must be approved by the Commissioner prior to its implementation	41
Other relevant information	43
Detailed contents list	53

Commissioner of Taxation

31 March 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)(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)
- ITAA 1936 27E(1)(b)(i)
- 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(1)(c)
- ITAA 1936 27E(4)
- ITAA 1936 27E(5)
- TAA 1953 Pt IVA
- Copyright Act 1968

ATO references

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