



# ***CR 2005/34 - Income tax: Approved Early Retirement Scheme - Department of Justice - Corrections Victoria***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *5 May 2005*



## Class Ruling

### Income tax: Approved Early Retirement Scheme – Department of Justice – Corrections Victoria

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#### **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**

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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 Department of Justice – Corrections Victoria at Head Office Finance, (including one staff member who is currently in a different area) who receive a payment under the arrangement described in paragraphs 12 to 39.

#### **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 39.

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

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10. This Ruling applies from 5 May 2005 until it is withdrawn. 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

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11. This Ruling is withdrawn and ceases to have effect after 31 August 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

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### 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 the Department of Justice (DOJ); and
- records of telephone conversations with a representative of DOJ.

13. The DOJ is seeking approval for an early retirement scheme known as a Voluntary Departure Package (VDP) relating specifically to Corrections Victoria (CV).

14. A VDP will be offered to all CV Head Office Finance staff, including one staff member holding a substantive position within Finance (currently on secondment in a different area within CV), to facilitate ongoing restructuring and organisational change.

15. The purpose of offering the VDP is to re-organise the operations of the employer with an identified purpose in mind, that is, so that administrative tasks common to other DOJ agencies are transferred to DOJ Finance and that the balance of tasks are restructured in a way that best meets the employer's business objectives.

16. The restructure will see the elimination of the accounts section which is principally responsible for information processing. The residual tasks comprising advice and systems support will be spread across the remaining staff.

17. The centralisation of administration tasks has reduced opportunities for current staff, therefore, redeployment and attrition as options to achieve the desired work changes have been considered inappropriate in this case.

18. All affected staff will be asked to consider taking a VDP through an expression of interest process.

19. All staff who do not participate in the proposed scheme and who seek to remain in CV will be offered ongoing roles.

20. The number of employees affected by the rationalisation or re-organisation who will be subject to the scheme will be fifteen (fourteen full-time and one part-time), with a restructure impacting six roles directly and the balance of the staff being affected by any consequent job realignments.

21. CV envisage the staffing levels may be reduced by up to eight positions depending on the number of applications. The minimum number of staff CV are looking to accept a package is three.

22. In the event that less than three employees accept a VDP, CV will review job task allocation to ensure all staff have complete roles that match their skill sets.

23. Of the existing staff in the Finance unit, CV intends to exercise a right to veto two key personnel who cannot be readily replaced and whose loss would impair the efficiency of CV's business operations. The two key personnel of the Finance unit are the Supply Manager and the Budget Manager.

24. Once an offer is made by CV, the employee will have ten (10) business days from the date the offer is made, to register their acceptance.

25. From the date of acceptance from staff, CV will implement the restructure within two (2) months.

26. As provided for in the Victorian Public Service, the VDP payments under the approved early retirement scheme (AERS) are:

- four (4) weeks pay in lieu of notice; plus
- a lump sum voluntary departure incentive of up to \$10,000 (for a full-time employee); plus
- two (2) weeks pay per year of continuous service up to a maximum of 15 years (30 weeks pay).

27. The Victorian Government Policy precludes re-employment within the Victorian Public Service for a period of three calendar years from receipt of a VDP.

28. The total of the VDP will be completely tax free provided the amounts received by the employee do not exceed the tax free threshold for the current financial year.

29. If the amount the employee receives is greater than the tax free limit, then the part of the amount over the tax free limit will be taxed as an eligible termination payment (ETP). As an ETP, the employee may rollover this portion of the package and it will count towards the employee's reasonable benefit limits.

30. 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 VDP relates. For the year ending 30 June 2006, the \$6,194 plus \$3,097 limits will be indexed to rise in line with increases in average weekly ordinary time earnings.

31. The total package cannot exceed the gross ordinary time pay to which an employee would have been entitled had the employee continued employment to age 65 years.

32. The employees will also receive other usual resignation or retirement entitlements, however these do not form part of the VDP payment. These may include:

- pay in lieu of long service leave in accordance with the employee's award or current conditions of employment;
- pay in lieu of recreation leave; and
- other accrued entitlements that would usually be paid out to the employee on resignation or retirement.

### **Payments made under the Scheme**

33. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the conditions set out in paragraphs 34 to 39 must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

34. The payment must be an ETP made in relation to the employee in consequence of his or her employment being terminated under the approved early retirement scheme.

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

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

37. 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.

38. 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.

39. 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**

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40. The early retirement scheme VDP offered by the Department of Justice – Corrections Victoria is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

41. 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.

42. 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

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

44. The Commissioner has issued Taxation Ruling TR 94/12 Income tax: approved early retirement scheme and bona fide redundancy payments which sets out guidelines on the application of section 27E.

45. 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 discussed below.

### **The scheme must be offered to all employees within a class identified by the employer**

46. 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).

47. The class of employees to which the scheme is proposed to be offered is all CV Head Office Finance staff including one staff member holding a substantive position within Finance (currently on secondment in a different area within CV), to facilitate ongoing restructuring and organisational change.

48. This class of employees does not come within subparagraph 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).

49. It is noted, however, that CV 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 CV's business operations. The two key personnel of the Finance unit are the Supply Manager and the Budget Manager. 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**

50. 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).

51. Paragraphs 14 to 23 of this Ruling describe the nature of the rationalisation or re-organising the CV operations. The proposed scheme meets the requirements set out in subparagraph 27E(1)(b)(vi); accordingly the second condition for approval has been met.

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

52. The scheme is proposed to operate for a period from 5 May 2005 to 31 August 2005. Approval was granted prior to implementation, therefore the third condition is satisfied.

53. The scheme will be in operation for approximately 4 months which is within the period recommended in TR 94/12.

**Other relevant information**

54. 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.

55. 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.

56. 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'.

57. 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' as under subsection 27A(19) of the ITAA 1936.

58. 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. The \$6,194 plus \$3,097 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

59. The total of the amount received on the termination of employment calculated in accordance with paragraph 26 qualifies as an approved early retirement scheme payment.

60. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 58 to determine the 'tax-free amount'.

61. 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.

62. 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.

63. 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**

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

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**Commissioner of Taxation**

18 May 2005

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

## ATO references

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