



CR 2006/72 - Income tax: Approved Early Retirement Scheme - Australian Wool Testing Authority Ltd

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Class Ruling

Income tax: Approved Early Retirement Scheme – Australian Wool Testing Authority Ltd

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1 This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for entities 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.

Relevant provision(s)

3. The relevant provisions dealt with this Ruling are:

- section 27A of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 27CB of the ITAA 1936; and
- section 27E of the ITAA 1936.

All legislative references in this Ruling are to the ITAA 1936 unless otherwise indicated.

Class of entities

4. The class of entities to which this Ruling applies is those employees of the Australian Wool Testing Authority Ltd (AWTA) who receive a payment under the scheme described in paragraphs 15 to 32 of this Ruling.

Qualifications

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

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 32 of this Ruling.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme 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 after 1 August 2006. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or

- the relevant provisions are not amended.

11. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Note: The Addendum to this Ruling that issued on 4 July 2007 applies on and from 1 July 2007.

Withdrawal

14. This Ruling is withdrawn and ceases to have effect after 31 July 2007. The Ruling continues to apply, in respect of the relevant provisions ruled upon, to all entities within the specified class who enter into the specified scheme during the term of the Ruling. Thus, the Ruling continues to apply to those entities, even following its withdrawal, for schemes entered into prior to withdrawal of the Ruling. This is subject to there being no change in the scheme or in the entities' involvement in the scheme.

Scheme

15. The scheme 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 scheme are:

- correspondence from a representative of AWTA; and
- records of telephone conversations held with a representative of AWTA.

16. AWTA is seeking approval for an early retirement scheme (ERS) in relation to a group of employees.

17. The purpose of the ERS is to facilitate the re-organisation of AWTA's Senior Operations structure to meet its current and future management requirements as a result of a review that was undertaken by AWTA of all operations positions.

18. The re-organisation will be implemented by AWTA filling the positions of employees who accept the offer of early retirement with persons that have different experience, technical skills, training and educational qualifications.

19. AWTA considers the skills and qualifications of the persons filling the positions will add value to the organisation in that they will be:

- (i) attuned to AWTA's current corporate strategy and direction;
- (ii) familiar with currently accepted workplace practices;
- (iii) willing to accept change and implement corporate policy and objectives into the workplace;
- (iv) responsive and aware of the changing needs of clients;
- (v) able to take advantage of emerging technologies to improve customer services; and
- (vi) attuned to the organisation's stakeholders through their educational qualifications.

20. The divisions affected by the re-organisation are expected to be AWTA's testing and sampling divisions.

21. The class of employees who will be made an offer of early retirement is those employees of AWTA who are Senior Operations Managers aged 55 years and over.

22. Offers of early retirement will be made after approval of the ERS by the Commissioner and those offers will be made to the employees within the class on the same date.

23. AWTA is prepared to let all employees within the class retire early and does not intend to veto any application for early retirement from those employees.

24. Employees who formally accept the offer of early retirement, will have their employment terminated on mutually agreed dates prior to 1 August 2007.

25. The ERS payment for eligible employees who accept the offer is an ex-gratia payment, which includes 6 months salary in lieu of notice equal to 2 years remuneration at the eligible employee's normal rate of pay as at the retirement date.

Payments made under the scheme

26. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the conditions set out in paragraphs 27 to 32 of this Ruling must be met.

Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

27. 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.

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

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

30. 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.

31. 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.

32. 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

33. The early retirement scheme offered by the Australian Wool Testing Authority Ltd (AWTA) is an approved early retirement scheme for the purposes of section 27E.

34. 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.

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

Class Ruling

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Page status: **legally binding**

Commissioner of Taxation

2 August 2006

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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

37. 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.

38. Paragraph 14 of TR 94/12 states that:

Three conditions must 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

39. 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).

40. The class of employees to whom early retirement will be offered is set out in paragraph 21 of this Ruling.

41. 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).

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

42. 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).

43. Paragraphs 17 to 20 of this Ruling describe the nature of the rationalisation or re-organisation of AWTA's operations. In approving the scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce 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).

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

44. The scheme is proposed to operate for a period from 1 August 2006 to 31 July 2007. Since the implementation date has already passed, the scheme fails to meet the requirement of paragraph 27E(1)(c).

45. 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 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...

46. 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).

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

Other relevant information

48. 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.

49. 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.

50. 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'.

51. 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'.

52. For the year ending 30 June 2007, the tax-free amount is limited to \$6,783 plus \$3,392 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 \$6,783 and \$3,392 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

53. The total of the amount received on the termination of employment calculated in accordance with paragraph 25 of this Ruling qualifies as an approved early retirement scheme payment.

54. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 52 of this Ruling to determine the 'tax-free amount'.

55. 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.

56. 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.

Payments made after 30 June 2007

57. For payments made after 30 June 2007 the requirements in section 83-180 of the *Income Tax Assessment Act 1997* (ITAA 1997) for a payment to be an early retirement scheme payment remain essentially the same as set out in paragraphs 49 to 56 of this Ruling.

58. For the year ending 30 June 2008, the tax-free amount is limited to \$7,020 plus \$3,511 for each complete year of service.

59. The tax-free amount of the early retirement scheme payment made after 30 June 2007 that falls within the limit specified in section 83-170 of the ITAA 1997 will not be assessable income and will not be exempt income.

60. Any payment in excess of this limit will be an employment termination payment as defined in section 82-130 of the ITAA 1997, and will be split up into tax free and taxable components. The tax free component of an employment termination payment includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

61. Employment termination payments cannot be rolled-over into a superannuation fund.

Appendix 2 – Detailed contents list

62. The following is a detailed contents list for this Ruling:

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References

<i>Previous draft:</i>	- ITAA 1936 27CB
Not previously issued as a draft	- ITAA 1936 27E
	- ITAA 1936 27E(1)(a)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 27E(1)(a)(i)
TR 94/12	- ITAA 1936 27E(1)(a)(ii)
	- ITAA 1936 27E(1)(a)(iii)
	- ITAA 1936 27E(1)(a)(iv)
<i>Subject references:</i>	- ITAA 1936 27E(1)(a)(v)
- approved early retirement	- ITAA 1936 27E(1)(b)
scheme payments	- ITAA 1936 27E(1)(b)(i)
- early retirement scheme	- ITAA 1936 27E(1)(b)(ii)
payment	- ITAA 1936 27E(1)(b)(iii)
- eligible termination payments	- ITAA 1936 27E(1)(b)(iv)
- eligible termination payments	- ITAA 1936 27E(1)(b)(v)
components	- ITAA 1936 27E(1)(b)(vi)
- employment termination	- ITAA 1936 27E(1)(c)
payment	- ITAA 1936 27E(2)
	- ITAA 1936 27E(4)
<i>Legislative references:</i>	- ITAA 1936 27E(5)
- TAA 1953	- ITAA 1997 82-130
- TAA 1953 Sch 1 357-75(1)	- ITAA 1997 83-170
- ITAA 1936 27A	- ITAA 1997 83-180
- ITAA 1936 27A(1)	- Copyright Act 1968
- ITAA 1936 27A(19)	

ATO references

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