



CR 2001/15 - Income Tax: Approved Early Retirement Scheme for the Department of Natural Resources and Environment

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 This document has changed over time. This is a consolidated version of the ruling which was published on *26 April 2001*



Class Ruling

Income Tax: Approved Early Retirement Scheme for the Department of Natural Resources and Environment

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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.

Tax law(s)

2. The tax law dealt with in this Ruling is section 27E of the *Income Tax Assessment Act 1936*.

Class of persons

3. The class of persons to whom this Ruling applies is:

On-going employees in the following three branches of the Land Registry group who are located within the Melbourne CBD:

- Title Registration Services;
- Land Records Information Services; and
- Systems and Infrastructure;

whose skills, experience and knowledge are not relevant to the future business needs of the employer, and who receive a payment under the arrangement described below in paragraphs 10 to 30.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 10 to 30 is carried out in accordance with the details of the arrangement provided in this Ruling.
6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:
 - (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 - (b) this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies from 26 April 2001. 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 (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn and ceases to have effect after 19 April 2002. 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

10. The Department of Natural Resources and Environment is seeking approval for an early retirement scheme known as the Voluntary Departure Package (VDP) scheme.

11. The following details of the arrangement have been obtained from the Department by correspondence dated 17 April 2001, 18 April 2001 and 26 April 2001, and telephone conversation on 17 April 2001.

12. The scheme is to operate and remain valid for the period 26 April 2001 until 19 April 2002.

13. The department intends to call for expressions of interest in a VDP from approximately 320 staff employed on an on-going capacity, within the following three branches of the Land Registry Group:

- Title Registration Services;
- Land Records Information Services; and
- Systems and Infrastructure.

14. The purpose of the scheme is to facilitate on-going restructuring and organisational change. The introduction of new technology and business re-engineering will reduce the staffing needs once systems are fully operational.

15. Key features of the program and the package parameters are:

- it is expected that up to 45 packages will be utilised;
- the staff are located within the Melbourne CBD;
- employees are not compelled to accept VDP offers;
- the VDP package is standard for all recipients but is not available to employees aged 65 or over;
- there is a strict policy of no re-employment within the Victorian government sector for a period of three (3) years upon accepting a VDP.

16. The Department will commence implementing changes to the revised structure during April with full implementation of the structure including job filling programs expected to be completed by 31 December 2001. The expression of interest will operate during this eight (8) month time frame.

17. Staff who accept a VDP will exit progressively. Short term operational requirements require the Department to stagger exit dates for VDP recipients from 1 June 2001 to 19 April 2002 (some staff will be required to facilitate the transition from the existing to new systems).

18. Assessment of staff to be offered VDPs will depend on operational requirements and the funding limitation. This will involve consideration of whether the number of staff interested is greater than the number of available packages and the skills, experience and knowledge of staff relevant to future business needs.

19. Consistent with Departmental practices, staff who do not receive an offer of a VDP have recourse to the departmental grievance process.

20. Staff interested in the VDP can only be registered by completing and returning a standard form.

21. The VDP consists of:

- a flat payment of four (4) weeks pay at the staff member's substantive rate of ordinary time pay immediately before resignation; plus
- two (2) weeks pay per year of service to a maximum of fifteen (15) years (30 weeks pay); plus
- a lump sum voluntary departure incentive of up to \$10 000 (based on employment time fraction).

Note: Where an employee who is offered a VDP has less than one year service they will receive a corresponding fraction of the VDP they would have been paid at one year.

22. All other usual resignation or retirement entitlements are unaffected by accepting the package.

23. An information bulletin on the voluntary departure package will be available to affected staff which provides essential information about the current VDP.

Payments made under the scheme

24. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the following conditions must be met. Note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

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

26. The payment must not be made from an eligible superannuation fund.
27. The payment must not be made in lieu of superannuation benefits.
28. 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.
29. 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.
30. 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

31. The VDP is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936*.
32. Accordingly, so much of the eligible termination payment as exceeds the amount of an eligible termination payment 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.

Explanations

33. Where a scheme satisfies the requirements of section 27E of the *Income Tax Assessment Act 1936* (the Act), that scheme will be an 'approved early retirement scheme.'
34. The Commissioner of Taxation (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.

35. 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)).’

1. The scheme must be offered to all employees within a class identified by the employer

36. In order to satisfy this condition, the scheme must be offered to all employees within one of the categories specified in subparagraphs 27E(1)(a)(i) to (v).

37. The class of employees to whom the scheme is proposed to be offered is:

On-going employees in the following three branches of the Land Registry group who are located within the Melbourne CBD:

- Title Registration services;
- Land Records Information Services; and
- Systems and Infrastructure;

whose skills, experience and knowledge are not relevant to the future business needs of the employer.

38. 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. The purpose of the requirement is to identify a class of employees is to ensure that the scheme is not limited to a few selected employees. In approving this class of employees the Commissioner has also considered the nature of the rationalisation or re-organisation of the operations of the employer. Accordingly, the above class of employees is considered to have met the requirements under subparagraph 27E(1)(a)(v).

39. It is noted that assessment of staff to be offered VDPs will depend on operational requirements and the funding limitation. This will involve consideration, where the number of staff interested is

greater than the number of packages offered, of how the skills, experience and knowledge of a particular employee is relevant to future business needs. The determination of the employees to be offered the opportunity to participate in 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

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

41. The applicant has stated that the purpose of the VDPs is to facilitate on-going restructuring and organisational change. The introduction of new technology and business re-engineering will reduce the staffing needs once the new systems are fully operational.

42. As the proposed scheme meets the requirement in subparagraphs 27E(1)(b)(v), accordingly the second condition for approval has been met.

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

43. The applicant has requested that the offer of the scheme operate and remain valid for the period 26 April 2001 until 19 April 2002. Approval of the scheme will be given prior to the implementation date of 26 April 2001, therefore the third condition is satisfied.

44. The scheme will be in operation for approximately 12 months, which is within the period recommended in paragraph 28 of 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 retirement or resignation 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 Act):

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- the payment must be an eligible termination payment 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 limits will be exempt from income tax, and called the "tax-free amount."

49. For the year ending 30 June 2001, the tax-free amount is limited to \$5062 plus \$2531 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 \$5 062 and \$2 531 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

50. Furthermore, the tax-free amount will:

- not be an eligible termination payment (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 83 and post-June 83 (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 taxed under the provisions of the Surcharge legislation, whether it is taken in cash or rolled-over.

53. The following payments qualify as an approved early retirement scheme payment and are exempt from tax within the limits described above:

- (a) a flat payment of four (4) weeks pay at the staff member's substantive rate of ordinary time pay immediately before resignation; plus
- (b) two (2) weeks pay per year of service to a maximum of fifteen (15) years (30 weeks pay); plus
- (c) a lump sum voluntary departure incentive of up to \$10 000 (based on employment time fraction).

54. Where an employee has less than one year service, the corresponding fraction of the VDP they are paid will be subject to the limit described above.

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

Detailed contents list

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

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Commissioner of Taxation

9 May 2001

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|---------------------------------------|----------------------------|
| <i>Previous draft:</i> | - ITAA 1936 27E |
| Not previously released in draft form | - ITAA 1936 27E(1)(a) |
| | - ITAA 1936 27E(1)(a)(i) |
| | - ITAA 1936 27E(1)(a)(ii) |
| <i>Related Rulings:</i> | - ITAA 1936 27E(1)(a)(iii) |
| CR 2001/1; TR 92/1; TR 97/16; | - ITAA 1936 27E(1)(a)(iv) |
| TR 92/20; TR 94/12; TR 94/12E | - ITAA 1936 27E(1)(a)(v) |
| | - ITAA 1936 27E(1)(b) |
| <i>Subject references:</i> | - ITAA 1936 27E(1)(b)(i) |
| - Approved early retirement scheme | - ITAA 1936 27E(1)(b)(ii) |
| payments | - ITAA 1936 27E(1)(b)(iii) |
| - eligible termination payments | - ITAA 1936 27E(1)(b)(iv) |
| - eligible termination payments | - ITAA 1936 27E(1)(b)(v) |
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| | - ITAA 1936 27E(4) |
| | - ITAA 1936 27E(5) |
| <i>Legislative references:</i> | |
| - ITAA 1936 27A(1) | |

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