

CR 2001/19W - Income Tax: Approved Early Retirement Scheme for Deakin University



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Class Ruling

Income Tax: Approved Early Retirement Scheme for Deakin University

Contents	Para
What this Class Ruling is about	1
Date of effect	8
Withdrawal	9
Arrangement	10
Ruling	24
Explanations	26
Detailed contents list	45

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

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 all staff of Deakin University and who receive a payment under the arrangement described below in paragraphs 10 to 16.

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 16 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- (b) this Ruling may be withdrawn or modified.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 13 June 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 This Ruling is withdrawn and ceases to have effect after 13 June 2002.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. Deakin University is seeking approval for an early retirement scheme known as the Early Retirement Scheme 2001.

11 The arrangement that is the subject of the 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:

- Information obtained from the Head of Human Resources Services Division by correspondence dated 19 February 2001, 20 April 2001; and
- 21 May 2001 and 23 May 2001.

12. Deakin University is engaged in substantial review and rationalisation of services and course delivery and this has required restructuring and rightsizing of its current workforce. To assist in the process of workforce change, the University is seeking approval for an Early Retirement Scheme.

13 The University wishes to offer the benefits of an Early Retirement Scheme to all of its staff, regardless of age, with the limitation that staff approaching retirement age should not receive a benefit under the Scheme which is greater than the quantum of salary they would have received had they continued to work in the period between the early retirement date and the date on which they would reach their normal intended retirement age. However, the University acknowledges the legislative requirement that an employee's termination under the scheme must occur before his or her sixty-fifth birthday and accordingly, the Scheme will not be offered to any staff 65 years of age or over.

14 The University wishes the Early Retirement Scheme to operate across all areas of the University, and does not propose to exclude applicants from any particular area. However, there may be a limitation of benefits and approval may not be granted where staff meet the rejection criteria described below.

15 Staff members' applications for early retirement would be rejected only if they occupy key positions in the University or positions which the University believed would have to be replaced should the staff member leave.

16. The University proposes to offer two weeks pay for each year of completed service under the proposed scheme, up to a limit of 60 weeks.

Payments made under the Scheme

17. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the following conditions must be met. Please note, any payment made

CR 2001/19

under the scheme that does not satisfy these requirements is not covered by this Ruling.

18. 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.

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

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

21. The employee terminated 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.

22. 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.

23. 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

24. The Deakin University Early Retirement Scheme 2001 is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936*.

25. 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

26. 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.’

27. 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.

28. 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)).’

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

29. 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).

30. Participation in the scheme is open to all staff of the University, with the limitation that staff approaching retirement age should not receive a benefit under the scheme which is greater than the quantum of salary they would have received had they continued to work in the periods between the early retirement date and the date on which they would reach their intended retirement age and so the first condition is satisfied.

31. The University acknowledges the legislative requirement that the termination time under the scheme must be before the sixty-fifth birthday of the employee and accordingly the scheme will not be offered to any staff 65 years of age or over. In addition, where a staff member is employed under contract, the date of termination under the scheme must occur before the date of termination under that contract.

32. It is noted that the University retains a limited right of veto whereby staff members' applications for early retirement would be rejected if they occupy key positions in the University or positions which the University believed would have to be replaced should the staff member leave. 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

33. 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).

34. The purposes of the Deakin University Early Retirement Scheme 2001 are described at paragraph 12 of this ruling. 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

35. The scheme will be approved prior to its implementation on 15 June 2001. Therefore the third condition is satisfied. The scheme will be in operation for one year, which is within the period recommended in TR 94/12.

Other relevant information

36. 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.

37. 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):

- 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.

[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.']

38. 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."

39. 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.

40. 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.

41. 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.

42. 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.

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

- The payments made by Deakin University Early Retirement Scheme 2001 as described in paragraph 16.

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

Detailed contents list

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

What this Class Ruling is about	1
Tax law(s)	2
Class of persons	3
Qualifications	4
Date of effect	8
Withdrawal	9
Arrangement	10
The scheme	11
Payments made under the scheme	17
Ruling	24
Explanations	26
<i>The scheme must be offered to all employees within a class identified by the employer</i>	29
<i>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</i>	33
<i>The scheme must be approved by the Commissioner prior to implementation</i>	35
<i>Other relevant information</i>	36

Detailed contents list**45**

Commissioner of Taxation13 June 2001

Previous draft:

Not previously issued in draft form

*Related Rulings/Determinations:*CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TR 94/12; TR 94/12ER
Notice of Erratum*Subject references:*

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

Legislative references:

- ITAA 1936 27A(1)
- ITAA 1936 27E
- 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)(a)
- ITAA 1936 27E(1)(b)
- ITAA 1936 27E(1)(b)(i)
- ITAA 1936 27E(1)(b)(iii)
- ITAA 1936 27E(1)(c)
- ITAA 1936 27E(4)
- ITAA 1936 27E(5)

ATO References

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