



# ***CR 2001/2 - Income Tax : Approved Early Retirement Scheme (SA - ETVSP)***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *19 September 2001*



## **Class Ruling**

### **Income Tax : Approved Early Retirement Scheme (SA – ETVSP)**

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#### ***Preamble***

*The number, subject heading, and the **What this 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.*

*[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 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.

#### **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/are

- employees who have been declared excess, or
- employees who are part of a group where some or all of the employees have been declared excess
- any employee who is similarly classified or skilled to employees designated in (1) and (2) above who could be separated to enable the necessary workforce reduction through redeployment of excess employees

in agencies covered by the *South Australian Government Wages Parity Enterprise Agreement 1999* or to agencies having special Cabinet approval to access the Enhanced Targeted Voluntary Separation Package (ETVSP) scheme, and receive a payment under the arrangement described below in paragraphs 10 to 39.

Note: for these purposes employees may be declared excess where:

- (a) the tasks undertaken by the relevant employee(s) are no longer required or no longer required at a specific geographical location;
- (b) the relevant employee(s) or some of the employees within the relevant group lack the occupational skills to contribute effectively to public sector operations in the medium to long term (ie are employees whose skills are no longer required or employees who do not possess the skills required to undertake current tasks and who are unlikely to acquire the required skills in the foreseeable future or who have failed to develop the required skills following suitable retraining and are assessed as not likely to gain these skills.)

## 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 39 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**

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8. This Ruling applies from 4 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**

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9. This Class Ruling is withdrawn and ceases to have effect after 19 December 2001. 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**

10. The Commissioner for Public Employment (CPE) is seeking approval for an ETVSP scheme.

11. The following details of the arrangement have been obtained from the CPE by correspondence dated 9 March 2001, 13 March 2001 and 7 September 2001.

12. The *Public Sector Management Act 1995 Determination (No. 4)* (hereafter referred to as 'the PSM Act Determination') dated 19 March 2001 states the objectives of the scheme as follows:

'The ETVSP Scheme forms part of a range of human resource management measures designed to facilitate public sector change for the purposes of ensuring more effective services to the South Australian community.

The primary aims of the ETVSP scheme are to facilitate workforce restructuring, the enhancement of the workforce skills profile, graduate recruitment and the ongoing modernisation and improvement of the efficiency and productivity of the public sector by:

- (a) providing an enhanced separation offer to facilitate ongoing restructuring;
- (b) enhancing the skill base of the South Australian public sector;
- (c) providing increased graduate employment and an improved youth employment profile in the SA public sector; and
- (d) providing agencies with additional capacity to meet existing youth recruitment targets and to assist in the ongoing employment of these young people.'

13. For employees who are not teachers and lecturers employed by the Department of Education, Training and Employment, the scheme will be in operation for a period from 19 March 2001 to 19 October 2001, with the period during which packages may be offered by agencies ending on 19 September 2001. For teachers and lecturers of the Department of Education, Training and Employment, the scheme will be in operation for a period from 19 March 2001 to 19 December 2001, with the period during which packages may be offered by that Department ending on 21 November 2001. The proposed scheme provides an enhanced level of benefits, and following the expiration of the term, benefits on voluntary separation packages will revert to 8 weeks pay plus 3 weeks pay for each year of completed service to a maximum of 104 weeks.

14. The scheme applies to agencies covered by the *South Australian Government Wages Parity Enterprise Agreement 1999* or to agencies having special Cabinet approval to access the ETVSP scheme. Any public sector agency may seek Cabinet approval to access the scheme. Cabinet approval may authorise agencies to be reimbursed for ETVSP payments by the Department of Treasury and Finance.

15. The ETVSP scheme is the only separation scheme authorised and available to assist approved agencies in restructuring and enhancing workforce skill profiles.

16. The scheme will provide agencies with delegated authority to offer ETVSPs. Agencies seeking to use the scheme are required to submit broad agency workforce plans to the CPE, and the CPE will then review the option of delegating the detailed allocation and management of an approved number of ETVSPs to the agency.

17. Agencies are required to consult with appropriate unions, job representatives and employees on the nature of workforce restructuring/reductions.

18. Agencies may seek voluntary requests for consideration of an ETVSP only from eligible participants, as explained in Section 4 of

the PSM Act Determination, and as detailed at 'Class of Persons' at paragraph 3 of this ruling.

19. Agencies may seek an indication of who would be interested in requesting an offer prior to decisions being taken on offers to be made.

20. The scheme is to be funded from a central fund jointly administered by the Office of the CPE and the Department of Treasury and Finance. Other termination leave payments will be met from within an agency's existing budget.

21. Under the scheme, employees who meet the requirements may, following consideration for redeployment, either be redeployed or invited to request an offer of a separation package.

22. Employees who request an offer under the scheme, but do not accept a subsequent formal offer within the required four week period, shall subsequently be entitled to a Stage 2 package, that is, 4 weeks pay plus 2 weeks for each completed year of service, up to a maximum of 52 weeks pay.

23. Participation in the scheme is open to the Class of Persons as described in paragraph 3 of this ruling.

24. Casual employees and employees with no right to ongoing employment in the South Australian public sector are not eligible to participate.

25. A person employed on contract may be eligible to participate if they have a right to ongoing employment in the South Australian public sector and the position to which they are entitled to return at the end of the contract has become excess to requirements.

**Note:** For the purposes of this ruling, a 'person employed on contract' is assumed to be a person employed on a contract for service and not a sub-contractor, since the latter is not an 'employee.'

26. Separation payments for Executives/Senior Officers will be negotiated between themselves and the CPE.

27. The employer reserves the right to not offer an ETVSP to employees whose skills continue to be required by the agency or the public sector as a whole.

28. Packages under the scheme are not designed to be offered to employees who possess relevant skills but choose not to use them. The poor performance of such employees should be dealt with through normal performance management processes.

29. Participation by employees is strictly voluntary.

30. Benefits payable under the scheme are as follows:

(The calculation of the benefit is based on staged levels of payment depending on separation date/years of service and whether an offer of an EVTSP has previously been made.)

Stage 1: a minimum payment of 20 weeks pay plus 3 weeks pay for each completed year of service, with a maximum payment of 116 weeks pay if employees, having requested an offer, resign and separate within 4 weeks of a formal offer being made;

Stage 2: a minimum payment of 4 weeks pay, plus 2 weeks pay for each completed year of service, with a maximum payment of 52 weeks pay if employees, having requested an offer, resign and separate more than 4 weeks after a formal offer is made.

31. A formal offer and payment under the proposed scheme is conditional upon the employee voluntarily giving notice of resignation and actually resigning from the public sector. The resignation may become effective on a specific date agreed with the agency which is more than four weeks after the making of a formal offer.

32. The proposed scheme does not include any payment in lieu of superannuation benefits.

## **Payments made under the Scheme**

33. The following describes the requirements of the payments made under the above mentioned scheme that are covered by this Ruling. Any payments made under the scheme that do not satisfy these requirements are not covered by this Ruling.

34. 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.

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

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

37. The termination time must be 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.

38. 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.

39. At the termination time, there is no agreement in force between the taxpayer and the employer or the employer and another person, to re-employ the taxpayer after the date of termination.

## **Ruling**

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40. The Enhanced Targeted Voluntary Separation Package (ETVSP) scheme is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936*.

41. 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**

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42. 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.'

43. 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.

44. 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)).'

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

45. Prior to a consideration of this condition, it is necessary to look at who is the 'employer' referred to in section 27E. It is considered that in this case, the employer is the CPE on behalf of the State of South Australia. This view is supported by the 'Definitions' section of the scheme, which states that the "State of South Australia" means the Crown in right of the State of South Australia and includes, *inter alia*, 'the employer from whom the employee is resigning.'

46. Furthermore, agencies seeking to access the scheme are required to submit broad agency workforce plans detailing restructuring plans to the CPE. Upon approval to use the ETVSP scheme, the CPE delegates the management of an approved number of ETVSPs to the relevant agency. It is noted that the ETVSP is the only separation scheme authorised and available to assist approved agencies in restructuring and enhancing workforce skill profiles.

47. Accordingly, it is accepted that the Crown in right of the State of South Australia (referred to in this ruling as 'the State of South Australia') is the employer in this case.

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

49. Participation in the scheme is open to the class of employees described at paragraph 3 of this ruling. This class of employees does not come within any of subparagraphs 27E(a) (i) to (iv), therefore it must be considered under subparagraph 27E(a)(v), namely, all employees of the employer who constitute a class of employees approved by the Commissioner for the purposes of this paragraph.

50. It is acknowledged that the State of South Australia cannot simply offer redundancies to all government employees within the categories envisaged in subparagraphs 27E(a)(i) to (iv). The CPE is proposing to offer the ETVSP to all employees who are 'excess' (as defined in the scheme package) in all agencies covered by the *South Australian Government Wages Parity Enterprise Agreement 1999* (or agencies having special Cabinet approval to access the ETVSP scheme).

51. Although this may potentially constitute a very large class of employees, it is nevertheless considered an identifiable class of employees. Therefore, this class of employees is an approved class of employees for the purposes of subparagraph 27E(1)(a)(v).

52. It is noted that the employer retains a limited right of veto to not offer an ETVSP to employees whose skills continue to be required by the agency or by the public sector as a whole. The limitation of 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***

53. 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).

54. The purposes of the ETVSP scheme are described at paragraph 12 of this ruling. The proposed scheme meets subparagraphs 27E(1)(b)(i) and (vi); accordingly the second condition for approval has been met.

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

55. The scheme will be approved prior to its implementation on 19 March 2001. Therefore the third condition is satisfied.

56. The scheme will be in operation for the period 19 March 2001 to 19 December 2001, which is within the period recommended in TR 94/12.

***Other relevant information:***

57. 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.

58. 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.']

59. 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."

60. For the year ended 30 June 2001, the tax-free amount is limited to \$5 062 plus \$2 531 for each whole year of completed employment service to which the approved early retirement scheme payment relates. For the year ending 30 June 2002, the tax-free amount is limited to \$5 295 plus \$2 648 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.

61. 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.

62. 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.

63. 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.

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

- (a) severance payment of twenty weeks pay;
- (b) additional severance payment of three weeks pay per year of service up to a maximum of 116 weeks.

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

## **Detailed contents list**

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

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## Commissioner of Taxation

4 April 2001

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

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### ATO References

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