



# ***CR 2001/21 - Income Tax: Approved Early Retirement Scheme for the Department of Infrastructure***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *13 June 2001*



## **Class Ruling**

### **Income Tax: Approved Early Retirement Scheme for the Department of Infrastructure**

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Contents	Para
<b>What this Class Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>8</b>
<b>Withdrawal</b>	<b>9</b>
<b>Arrangement</b>	<b>10</b>
<b>Ruling</b>	<b>31</b>
<b>Explanations</b>	<b>33</b>
<b>Detailed contents list</b>	<b>56</b>

#### ***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**

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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**

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 employees in the Office of the Secretary and the Organisational Development Division employed by the Department of Infrastructure in Victoria 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

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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

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9. This Ruling is withdrawn and ceases to have effect after 18 November 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 Department of Infrastructure in Victoria is seeking approval for an early retirement scheme under section 27E of the *Income Tax Assessment Act 1936* (the Act).

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:

- correspondence from the Department of Infrastructure dated 13 February 2001 and 12 April 2001; and
- facsimile from the Department of Infrastructure dated 18 May 2001.

12. The Department of Infrastructure intends to call for expressions of interest in a Voluntary Departure Package (VDP) from all staff within their Office of the Secretary and the Organisational Development Division to facilitate a redefining of its role and subsequent organisational change.

13. The Office of the Secretary has recently undergone a restructure to enable its focus to be more strongly aligned with the new corporate direction of the Department. The Office currently consists of three staff, one of which is the Secretary of the Department, with two support positions.

14. Additional high level, professional corporate support is provided through the Organisational Development Division. This Division, which consists of approximately 100 staff located both within the CBD and regional Victoria, is currently undergoing a review of all its functions as part of its annual business planning process. This is essential to ensure that the division is able to meet legislative and budgetary requirements, with the expected redirection of a number of positions due to changes in technology and reporting requirements.

15. The business planning process has identified the need to reduce the number of general support staff whilst increasing the higher level technical and professional support essential for the running of such an organisation. The organisation is recognised as innovative with strong leadership in the corporate area. In recognition of the redefining of responsibilities and associated skills essential to provide the Department with the level of support necessary within budgetary limitations, it is anticipated that both the Office of the Secretary and

the Organisational Development Division will need to re-profile its workforce. This could affect up to twenty positions.

16. New technology means a shift from basic administrative positions driven by manual paper processes to faster, more accurate systems. To ensure the comfortable transition for all staff who wish to remain part of this new environment, it is proposed to give those not having the level of commitment to be involved an opportunity to voluntarily leave employment.

17. The offer of early retirement under the VDP will commence on 18 May 2001 and will be open for six months until 18 November 2001.

18. The scheme is set down by the Victorian Government under its Voluntary Departure Package and consists of payments as follows:

- (a) 4 weeks pay in lieu of notice
- (b) 2 weeks pay for each year of service up to 15 years
- (c) lump sum incentive of \$10 000.

Payments (b) and (c) will be pro rata payments for employees who work part time.

19. Employees of the Department are employed under the *Victorian Public Service (Non Executive Staff-Victoria) Agreement 2000* and are able to retire as early as 55 years of age with no limit on how long they can continue beyond that time.

20. The VDP is not available to employees aged 65 years or over.

21. Management must exercise reasonable discretion over which employees are provided with a VDP based on the operational requirements of the organisation and availability of funds. Employees are not compelled to accept VDP offers.

22. There is a strict policy of no re-employment within the Victorian Government sector for a period of three years upon accepting a VDP.

23. There is no agreement at the date of termination between a VDP recipient and the Department of Infrastructure or the Department of Infrastructure and another to re-employ a VDP recipient after the date of termination.

## **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. Please 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 (ETP) 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 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.

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**

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31. The Department of Infrastructure's 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 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.

## **Explanations**

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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)).'

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

36. 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).

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

- all employees within the Office of the Secretary and the Organisational Development Division in the Department of Infrastructure in Victoria.

38. This class of employees does not come within any subparagraphs 27E(1)(a)(i) to (iv), therefore it must be considered under subparagraph 27(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).

39. It is noted, however, the Department of Infrastructure will retain a right of veto over which employees are provided with a VDP based on the operational requirements of the organisation and availability of funds. 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***

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 purposes of the scheme are described at paragraphs 13 to 16 of this ruling. The proposed scheme meets the requirements set out in subparagraphs 27E(1)(b)(i) and (vi); accordingly the second condition for approval has been met.

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

42. Application for approval of the scheme dated 13 February 2001, was received in this office on 14 February 2001. The scheme is proposed to operate for a period from 18 May 2001 to 18 November 2001. Since the implementation date has already passed, the scheme fails to meet the requirement of paragraph 27E(1)(c).

43. 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....”

44. 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).

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

***Other relevant information***

46. 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.

47. 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 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 re-employ the taxpayer after the date of termination.

48. 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.'

49. 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."

50. 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.

51. Furthermore, 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.

52. 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.

53. 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 superannuation surcharge legislation, whether it is taken in cash or rolled-over.

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

- (a) 4 weeks pay in lieu of notice
- (b) 2 weeks pay for each year of service up to 15 years
- (c) lump sum incentive of \$10 000.

55. 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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56. 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
<b>Date of effect</b>	<b>8</b>
<b>Withdrawal</b>	<b>9</b>
<b>Arrangement</b>	<b>10</b>
The scheme	11
Payments made under the scheme	24
<b>Ruling</b>	<b>31</b>

<b>Explanations</b>	<b>33</b>
<i>The scheme must be offered to all employees within a class identified by the employer</i>	36
<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>	40
<i>The scheme must be approved by the Commissioner prior to implementation</i>	42
<i>Other relevant information</i>	46
<b>Detailed contents list</b>	<b>56</b>

**Commissioner of Taxation**

13 June 2001

*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*CR 2001/1; TR 92/1; 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)
- ITAA 1936 27E(1)(b)
- 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)(b)(i)
- ITAA 1936 27E(1)(b)(iv)
- ITAA 1936 27E(2)
- ITAA 1936 27E(4)
- ITAA 1936 27E(5)

ATO References

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