



# ***CR 2001/22 - Income Tax: The University of Melbourne - Approved Early Retirement Scheme***

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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: The University of Melbourne – Approved Early Retirement Scheme

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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/are
- all academic staff in continuing positions at Levels A to D in the Institute of Land and Food Resources in the University of Melbourne, and
  - all general employees in continuing positions at HEW Levels 1 to 9 in the Institute of Land and Food Resources in the University of Melbourne

and receive a payment under the arrangement described below in paragraphs 10 to 33.

#### **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 33 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- (b) this Ruling may be withdrawn or modified.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 the date of publication. 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 31 August 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.

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## Arrangement

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### The Scheme

10. 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 Human Resources department of the University of Melbourne dated 15 May 2001;
- record of telephone conversation with the Human Resources department of the University of Melbourne on 15 May 2001;
- facsimile from the Human Resources department of the University of Melbourne dated 23 May 2001; and
- facsimile from the Human Resources department of the University of Melbourne dated 4 June 2001.

11. The Institute of Land and Food Resources (the Institute) was created as a Faculty of the University as a result of a merger with the Victorian College of Agriculture and Horticulture (VCAH) in 1997.

12. The Institute offers courses in Vocational Education and Training (VET) and Undergraduate and Postgraduate coursework and research across eight campuses in Victoria.

13. The Institute has experienced a decrease in demand for its courses over the preceding years which has resulted in the need to substantially reorganise the operations of the Institute.

14. Details of the planned restructure are outlined in the Workforce Plan. The core elements, in so far as they affect staff, include:

- the creation of Vocational Education and Training only at campuses at McMillan, Longerenong and Glenormiston;
- the focussing of Higher Education at Burnley, Dookie, Parkville, Gilbert Chandler and Creswick (although VET will also be taught at some of these campuses);
- a change to the current five Department structure to three Schools;
- a reduction in overall staff positions due to a reduction in student demand; and

- a consequent requirement for some staff to transfer to other campuses.

15. Accordingly, a number of staff are now excess to the requirements of the University.

16. The parameters of the proposed scheme are:

- thirty (30) early retirement packages (Departure Packages);
- open to academic staff at Levels A to D and general staff at HEW Levels 1-9; and
- available to Institute employees in continuing positions only.

17. The benefit payable will comprise:

- a lump sum of 3 weeks salary for each completed year of continuous service at the University (or with the VCAH or its direct predecessors), subject to a maximum payment of 60 weeks salary;
- an additional payment of \$5 000 will be payable to staff with 10 completed years service, or \$7 500 for staff with more than 10 completed years service at the date of departure.

18. The Industrial Awards that apply to staff at the University are:

- *Universities and Post Compulsory Academic Conditions Awards 1999*
- *Higher Education Workers Victoria (Interim) Award 1993*
- *Higher Education Contract of Employment Award 1998*
- *The University of Melbourne Enterprise Agreement 1995*
- *The University of Melbourne Enterprise Agreement 1997.*

19. It is anticipated that staff will be asked to provide a statement of three preferences by 31 August 2001 as to their future career options, including an opportunity to express a preference for leaving the University.

20. In the event that a staff member elects to separate, he or she will be asked to nominate a preferred separation date. Preference Review and Placement committees will be established to examine all preferences and place staff in the new structure where possible in

accordance with the expressed preferences of individual staff. It is expected that all decisions will be reached by August 2001.

21. The offer of the Departure Packages will be open until 31 August 2001. It may be necessary to delay departures until late 2002 or early 2003 because of the requirement to complete teaching in courses which will no longer be offered. As in some cases, the higher education and Vocational Education and Training courses currently offered, will be discontinued on a particular campus after the current cohort of students complete their courses, up to 15 staff may be required to remain in University employment until the end of 2002 or early 2003. So while the offer will remain open only for a short period, in some cases departures will need to be staged so that the operating efficiency of the Institute is not impaired and students can complete the courses they have contracted to undertake.

22. The University is phasing out higher education courses on some campuses. Higher education courses normally run over a three year timeframe. The University has a contractual obligation to allow a student to complete the course in which he or she is enrolled on the campus where he or she enrolled. Many campuses are at a considerable distance from each other and courses are not replicated on all campuses.

23. The University has elected not to exclude from eligibility those staff who in 2002 may be the only staff member on a campus who can teach a specific subject, since it is likely that in 2003 there will be no work for them on that campus. In those circumstances, the University's view is that there should be a "one off" offer of departure packages, with the timing of departure from the University being in part determined by the contractual obligations of the University to allow the students to complete their courses.

24. The majority of students will complete in 2002, however it may be necessary in exceptional circumstances to allow students who fail to complete their course by the end of 2002, the opportunity to do so in a summer semester in early 2003. The University would expect that all teaching commitments will be completed by 31 March 2003.

25. The University reserves the right to reject an application where the loss of key personnel adversely affects the operation of a campus or school in the Institute.

26. There is no normal retirement age for staff at the University of Melbourne.

### **Payments made under the Scheme**

27. 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.

28. 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.

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

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

31. 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.

32. 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.

33. 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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34. The University of Melbourne's early retirement scheme for staff in the Institute of Land and Resources is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936*.

35. Accordingly, so much of the eligible termination payment (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

36. 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.’

37. 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.

38. 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***

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 the scheme is proposed to be offered are:

- all academic staff in continuing positions at Levels A to D in the Institute of Land and Food Resources in the University of Melbourne; and
- all general employees in continuing positions at HEW Levels 1 to 9 in the Institute of Land and Food Resources in the University of Melbourne

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 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).

42. It is noted, however that the University of Melbourne reserves the right to reject an application where the loss of key personnel adversely affects the operation of a campus or school in the Institute. 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***

43. 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).

43. The purposes of the scheme are described at paragraphs 13 to 15 of this ruling. The proposed scheme meets the requirements set out in subparagraphs 27E(1)(b)(iii), (iv) and (vi); accordingly the second condition for approval has been met.

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

45. The scheme is approved until 31 August 2001. However, while the offer will remain open only for the approved period, in the exceptional cases set out in paragraphs 21 to 24 of this Ruling, staff departures may need to be staged so that the operating efficiency of the Institute is not impaired and students can complete the courses they have contracted to undertake. Subject to paragraph 9 of this Ruling, the Ruling will continue to apply to all persons within the specified class who enter into the specified arrangement during the term of the ruling who are subject to these exceptional circumstances.

46. The scheme will be approved prior to its implementation, therefore the third condition is satisfied.

***Other relevant information***

47. 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.

48. 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.

49. 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.'

50. 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."

51. 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.

52. 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.

53. 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.

54. 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.

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

- a lump sum of 3 weeks salary for each completed year of continuous service at the University (or with the VCAH or its direct predecessors), subject to a maximum payment of 60 weeks salary.
- an additional payment of \$5 000 will be payable to staff with 10 completed years service, or \$7 500 for staff with more than 10 completed years service at the date of departure.

56. 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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**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 27E
- ITAA 1936 27E(1)(a)
- ITAA 1936 27E(1)(b)
- ITAA 1936 27E(1)(c)
- 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)(iii)
- ITAA 1936 27E(1)(b)(iv)
- ITAA 1936 27E(1)(b)(vi)
- ITAA 1936 27E(4)
- ITAA 1936 27E(5)

ATO References

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