



CR 2001/32 - Income tax: Approved Early Retirement Scheme - State Revenue Office Victoria (VDP)

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 This document has changed over time. This is a consolidated version of the ruling which was published on *25 July 2001*



Class Ruling

Income tax: Approved Early Retirement Scheme – State Revenue Office Victoria (VDP)

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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

- all employees of the State Revenue Office Victoria whose positions are relocating to the new Ballarat Office

and receive a payment under the voluntary departure package (VDP) arrangement described below in paragraphs 10 to 29.

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 29 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 - (b) this Ruling may be withdrawn or modified.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 25 July 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 30 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. 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:

- facsimile from the State Revenue Office Victoria dated 13 June 2001;
- facsimile from the State Revenue Office Victoria dated 25 June 2001;
- e-mail from the State Revenue Office Victoria dated 28 June 2001;
- e-mail from the State Revenue Office Victoria dated 29 June 2001;
- record of telephone conversation with a representative of the State Revenue Office Victoria dated 5 July 2001;
- facsimile from the State Revenue Office Victoria dated 16 July 2001.

11. The State Revenue Office Victoria is seeking the Commissioner of Taxation's approval to implement a voluntary departure package (VDP), as an early retirement scheme under section 27E of the *Income Tax Assessment Act 1936*.

12. This Class Ruling does not apply to payments made under the Targeted Separation Package (TSP) which is also offered by the State Revenue Office Victoria.

13. To support the State Government's initiative of regionalisation, the State Revenue Office will be locating some of its functions to a new Ballarat office.

14. The move to the new Ballarat office will affect 198 State Revenue Office employees.

15. The relocation will be phased in over 2 stages. Stage 1 will involve the relocation of 113 positions to Ballarat by 1 March 2002 while stage 2 will see a further 85 positions transferred to Ballarat by 1 October 2002.

16. Land Tax, Payroll Tax and Returns Assessing Branches of the State Revenue Office will be completely relocated in the Ballarat office while some support staff in Revenue Processing, Finance and Administration and Information Technology will also be relocated.

17. Staff in the affected areas mentioned above will be offered the opportunity to choose one of four options. They are:

- Option 1 Move to Ballarat
- Option 2 Elect to be considered for a VDP.
- Option 3 Redeployment program (staff for whom redeployment positions are unable to be found or who have rejected an offer of redeployment will be given a TSP).
- Option 4 Retraining and Redeployment program - this option will involve intense retraining and hopefully redeployment within the Victorian Public Sector. Staff choosing this offer may be given a TSP if they reject a suitable redeployment position or if they are unable to be placed at the end of the program.

18. The State Revenue Office Victoria retains a limited right of veto to be applied to applications by key personnel who cannot be readily replaced and whose loss would impair the efficiency of the State Revenue Office's business operations.

19. The following payments are made under the VDP:

- 4 weeks pay (in lieu of notice);
- lump sum voluntary departure incentive of \$10 000 (for a full time worker, pro rata for part time);
- 2 weeks pay per year of continuous service for up to 15 years.

20. The employees will also receive the following payment from the State Revenue Office Victoria but it does not form part of the approved early retirement scheme payment:

- accrued entitlement to long service leave, annual leave and leave loading.

21. The employees are covered by the following award and agreement:

Public Service (Non Executive Staff - Victoria) Conditions Award 2001.

Victorian Public Service (Non Executive Staff - Victoria) Agreement 2000.

22. The majority of employees will depart under the VDP by 31 December 2001. Staff that choose to relocate to Ballarat by 1 March 2002 may apply for a VDP if they change their mind within

3 months of relocating to Ballarat and they cease employment and receive the VDP payment by 30 June 2002.

Payments made under the Scheme

23. 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.

24. 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.

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

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

27. 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.

28. 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.

29. 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

30. The voluntary departure package offered by the State Revenue Office Victoria is an approved early retirement scheme for the purposes of section 27E of *the Income Tax Assessment Act 1936*.

31. 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

32. 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.'

33. 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.

34. 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

35. 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).

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

- all employees of the State Revenue Office Victoria whose positions are relocating to the new Ballarat Office.

37. 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).

38. It is noted, however, that the State Revenue Office Victoria retains a limited right of veto to be applied to applications by key personnel who cannot be readily replaced and whose loss would impair the efficiency of the State Revenue Office's business operations. 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

39. 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).

40. The purpose of the scheme is to support the State Government's initiative of regionalisation. To achieve this the State Revenue Office will be relocating some of its functions to a new Ballarat office. The proposed scheme meets the requirements set out in subparagraph 27E(1)(b)(iv). Accordingly the second condition for approval has been met.

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

41. The scheme is proposed to operate for a period from 3 July 2001 to 30 June 2002. Since the implementation date has already passed, the scheme fails to meet the requirement of paragraph 27E(1)(c).

42. 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....”

43. 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).

44. The scheme will be in operation for twelve months which is within the period recommended in 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):

- 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.

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 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. The \$5 295 and \$2 648 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 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 superannuation 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:

- 4 weeks pay (in lieu of notice);
- lump sum voluntary departure incentive of \$10 000 (for a full time worker, pro rata for part time);
- 2 weeks pay per year of continuous service for up to 15 years.

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

Detailed contents list

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

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Commissioner of Taxation25 July 2001

Previous draft:

Not previously issued in draft form

- ITAA 1936 27E(2)
- ITAA 1936 27E(1)(a)
- ITAA 1936 27E(1)(b)
- ITAA 1936 27E(1)(c)

*Related Rulings/Determinations:*CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TR 94/12; TR 94/12E

- 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)

Subject references:

- approved early retirement scheme
payments

- eligible termination payments

- eligible termination payments
components

- ITAA 1936 27E(1)(b)(i)
- ITAA 1936 27E(1)(b)(ii)
- ITAA 1936 27E(1)(b)(iii)
- ITAA 1936 27E(1)(b)(iv)
- ITAA 1936 27E(1)(b)(v)
- ITAA 1936 27E(1)(b)(vi)

Legislative references:

- ITAA 1936 27A(1)

- ITAA 1936 27E

- ITAA 1936 27E(1)

- ITAA 1936 27E(4)
 - ITAA 1936 27E(5)
-

ATO References

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