

CR 2001/4 - Income tax: Approved Early Retirement Scheme (Museum Victoria - VDP)

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Class Ruling

Income tax: Approved Early Retirement Scheme (Museum Victoria - VDP)

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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.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law' 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 classes of persons to whom this Ruling applies are:

- (i) Ongoing employees of Museum Victoria in the Division of Programs and Research; or
- (ii) Employees in other Divisions of Museum Victoria where the granting of a package will result in a net reduction of one employee/salary for each package offered,

who receive a payment under the arrangement described below in paragraphs 10 to 41.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

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5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 10 to 41 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- (b) this Ruling may be withdrawn or modified.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 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

9. This Class Ruling is withdrawn and ceases to have effect after 30 June 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

The Scheme

10. Museum Victoria is seeking the Commissioner's approval for an Approved Early Retirement Scheme for their voluntary departure packages (VDPs).

11. The scheme will affect approximately 15 staff in the organisation and will be offered from March 2001 to June 2001.

12. The objective of the scheme is to facilitate the achievement of job reduction targets arising from budget outcomes in 2000 and a subsequent workforce planning process.

13. The job reductions are mainly required in the Programs and Research Divisions which in the majority of cases, will involve a reduction of people performing specialised functions in scientific research and curatorial activities and related areas such as collection management, administrative/project support and production. Redeployment to other areas of the Museum is highly unlikely because of the specialised backgrounds of staff.

14. Employees in other Divisions will only be granted a package where this would result in a net reduction of one employee/salary for each package offered.

15. The granting of voluntary departure packages (VDPs) will facilitate a current restructure and minimise industrial action given that the basis for the restructure is to achieve job reductions.

16. Only ongoing employees of the organisation are eligible to apply. This scheme is not available to the following:

- an ongoing employee not currently on the payroll
- an employee on probation pending confirmation of ongoing appointment, or other trial employment arrangement
- fixed term employees
- a recipient of weekly non medical payments under Workcare/WorkCover.

17. Details of the basic package include:

Payment 1 - Notice of termination payment - A flat payment of 4 weeks pay at the employee's substantive rate of ordinary time pay immediately before resignation; PLUS

Payment 2 - Severance payment - 2 weeks per year of service to a maximum of fifteen years (30 weeks pay); PLUS

Payment 3 - Redundancy payment - A lump sum voluntary departure incentive of up to \$10 000.

18. All other entitlements on usual resignation or retirement, if applicable, will be paid as normal. These include:

- pay in lieu of long service leave in accordance with the Enterprise Partnership Agreement;
- pay in lieu of recreation leave;
- any eligible leave loadings;
- superannuation retirement benefits;
- superannuation resignation benefits;
- a deferred superannuation benefit when available on retirement;
- other accrued entitlements that would usually be paid out on resignation or retirement.

19. Expressions of interests for the VDP is not binding on either the employee or the agency. Individual offers of the package will be determined by management, having regard to the operational requirements of the agency and the availability of funding.

20. It is not compulsory for an employee to accept the package should it be offered and any change of mind can be made at any time before acceptance of a package.

21. Expression of interests are lodged by completing and returning a standard expression of interest form to the Human Resources Branch.

22. If offered a VDP, the employee will have approximately 10 working days to decide whether to accept.

23. In all cases the employment relationship must be completely ended by accepting the VDP. Where an employee resigns as opposed to retiring from service, they will also be required to resign as a member from the Statutory superannuation scheme.

24. The criteria used by the Museum in assessing expressions of interest arising from the process are detailed in paragraphs 25 to 32.

25. The Museum is not bound to accept any employee's expression of interest or to offer any particular employee a VDP.

26. Offers will be made on the basis of the criteria set by the Museum relating to operational requirements and funding issues.

27. The primary objective of the VDP program is the achievement of budget savings for the Museum. VDPs will be offered only where it is clear that the granting of such a package will result in a net

reduction of one employee/salary for each package offered. This may occur because the employee who is granted the package will not be replaced, or because they can be replaced via the redeployment of an existing surplus ongoing employee.

28. Packages will not be granted in situations where the Museum would be required to recruit to fill the vacancy caused by the departure of the package recipient and/or where the person is a clear match for a position at level elsewhere in the Museum and can be redeployed into that position.

29. Packages will not be granted where the applicant possesses skills which are of strategic importance to the Museum, and which are either in short supply, or non-existent elsewhere in the Museum.

30. The primary consideration in deciding to grant a package will be the ongoing operational requirements of the Museum, and the retention of a suitable skill mix to meet those requirements.

31. All VDP package recipients must agree not to seek or accept re-employment or any other fee for service from any Victorian public sector department or agency for a minimum of 3 calendar years from the date of their termination.

32. The granting of all packages must be in compliance with all policies of the Victorian Government and the requirements of the Australian Taxation Office.

33. Normal conditions of employment for employees of Museum Victoria are covered under *Museum Victoria's Enterprise Partnership Agreement 2000 to 2002* and the *Public Service (Non Executive Staff - Victoria) Interim Award 1996*.

34. Under these conditions of employment there is no specified date of retirement for employees and no requirement, on commencement of employment, for employees to elect a retirement date/age.

Payments made under the Scheme

35. The following describes the requirements of the type of 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.

36. 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.

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

38. The payment must not be made in lieu of superannuation benefits.
39. 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.
40. 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.
41. 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

42. The Voluntary Departure Packages (VDPs) is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936*.
43. 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

44. 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.'
45. The Commissioner of Taxation (hereafter referred to as '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.
46. 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

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

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

- (i) Ongoing employees mainly in the Division of Programs and Research. This scheme will enable a reduction of staff performing similar functions in the specialised area of scientific research and curatorial activities and related areas such as collection management, administrative/project support and production. Redeployment of staff in this position to other areas is highly unlikely due to their specialised backgrounds in the division; and
- (ii) Employees in other Divisions where the granting of a package will result in a net reduction of one employee/salary for each package offered.

49. It is therefore considered that these class of employees meet the requirements of an approved class of employees for the purposes of 27E(1)(a)(iii) and (v).

50. It is noted, however, that packages will not be granted where the applicant possesses skills which are of strategic importance to the Museum, and which are either in short supply, or non-existent elsewhere in the Museum.

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.

51. 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).

52. The applicant has stated that the main purpose of the VDP is to: 'facilitate the achievement of job reduction targets arising from budget outcomes in 2000 and a subsequent workforce planning process'. The restructuring process will result in job reductions as well as cuts in programming and exhibition development which has been affected by the museum moving from development mode to operational mode.

53. As the proposed scheme meets subparagraphs 27E(1)(b)(iii), accordingly the second condition for approval has been met.

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

54. The applicant has requested the implementation date of the scheme to be the date the scheme is approved until 30 June 2001. The approval date of the scheme will be 19 March 2001 and will be implemented by the organisation immediately after receiving written approval of the scheme. The third condition is therefore satisfied.

55. The scheme will be in operation for three and a half months, which is within the period recommended in paragraph 28 of TR 94/12.

Other relevant comments

56. 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.

57. 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 subsection 27E(4) 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.

58. 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 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 \$5062 and \$2531 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

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.
- 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 is also to be noted that the taxable amount of an approved early retirement scheme payment (that is, the amount over the tax-free amount) may be taxed under the provisions of the Surcharge legislation, whether it is taken in cash or rolled-over.

Taxation Treatment of Payments from the employer

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

- (a) notice of termination payment of four weeks;
- (b) severance payment of two weeks pay per year of service up to a maximum of 30 weeks;
- (c) voluntary departure incentive payment of up to \$10 000.00.

65. Furthermore, for those employees who terminate employment under the approved early retirement scheme, payments for normal entitlements to unused annual leave and unused long service leave are taxed at concessional rates, as shown in the table below:

Leave Type	Assessable Part	Maximum Tax Rate
Annual Leave	100%	31.5%
Long Service Leave		
Accrued Pre 16 August 1978	5%	Marginal
Accrued Post 15 August 1978	100%	31.5%

66. 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

 4 April 2001

Previous draft:

Not previously issued in draft form

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

- ITAA 1936 26AC
- ITAA 1936 26AD
- ITAA 1936 159S
- 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)

Subject references:

- Approved Early Retirement Scheme payments
- eligible termination payments

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