



CR 2001/50 - Income tax: Approved Early Retirement Scheme - Mount Isa Business Unit

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 This document has changed over time. This is a consolidated version of the ruling which was published on *10 October 2001*



Class Ruling

Income tax: Approved Early Retirement Scheme – Mount Isa Business Unit

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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* (‘ITAA 1936’).

Class of persons

3. The class of persons to whom this Ruling applies is
- all employees aged 55 and over of the Mount Isa Business Unit (as defined in paragraph 11) located in the unit’s operational and administrative activities at Mount Isa, Townsville and Bowen,

who receive a payment under the arrangement described below in paragraphs 10 to 31.

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 31 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- (b) this Ruling may be withdrawn or modified.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 10 October 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 September 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

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 Mount Isa Mines Holding Limited dated 18 July 2001;
- record of telephone conversation with a representative from Mount Isa Mines Limited dated 6 August 2001;
- correspondence from Mount Isa Mines Holding Limited dated 6 August 2001;
- record of telephone conversation with a representative from Mount Isa Mines Limited dated 7 August 2001;
- correspondence from Mount Isa Mines Holding Limited dated 20 September 2001;
- correspondence from Mount Isa Mines Holding Limited dated 24 September 2001; and
- correspondence from Mount Isa Mines Holding Limited dated 28 September 2001.

11. The Mount Isa Business Unit consists of 3 companies, Copper Refineries Pty Ltd (CRL), Bowen Coke Pty Ltd (BCP) and Mount Isa Mines Limited (ISA). All 3 companies are wholly owned subsidiaries of MIM Holdings Ltd.

12. BCP operates a coke manufacturing plant at Bowen with seventy-five percent of the output sold to ISA for use in lead smelting operations.

13. ISA mines copper, lead, zinc and silver and operates a Lead Smelter and a Copper Smelter at Mount Isa. ISA owns the assets situated at Mount Isa and employs staff to conduct mining and smelting operations.

14. CRL operates the refinery as agent of ISA and employs staff to conduct the operations. CRL operates as a cost centre of ISA. CRL refines anode copper received from the Mount Isa copper smelter and provides shipping and marketing services to ISA for copper and other products of ISA. ISA retains ownership of the product being processed and/or shipped and also owns the assets situated in Townsville.

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15. All managers and staff of CRL and BCP report to the Executive General Manager of Mount Isa operations and the financial and production activities are included in a single business unit for management reporting. Thus, operations of the above companies are collectively referred to as Mount Isa Business Unit.

16. It has been decided that Mount Isa Mines Limited, Copper Refineries Pty Ltd and Bowen Coke Pty Ltd will introduce an early retirement scheme as part of a continuous business improvement program which the companies operate.

17. The continuous business improvement plan includes many initiatives, some of which are:

- reducing production costs;
- increasing productivity;
- increasing safety and safety awareness;
- increasing profitability;
- lowering acquisition costs of inputs;
- employee rationalisation through replacing older employees; and
- employee reductions.

18. It is the intention of the companies in seeking approval of the Early Retirement Scheme to provide a mechanism by which to achieve a reduction in overall employee numbers and a rationalisation of the age mix of employees, keeping in mind the basically arduous nature of the industry.

19. The companies wish to achieve the necessary reductions in employee numbers and rationalise numbers of senior staff (particularly in the mining environment) by accommodating those people who wish to take early retirement.

20. The scheme is to be offered to all Mount Isa Business Unit employees aged 55 and over located in all operational and administrative activities of the companies at Mt Isa, Townsville and Bowen.

21. Accordingly, a process of inviting applications from eligible employees is proposed. The companies will not have any right of refusal of an application. It is proposed that the scheme remains open from the date of notification of the Ruling in the Commonwealth of Australia Gazette until 30 September 2002.

22. All employees who accept early retirement will be eligible for the following payments:

- accrued annual leave;

- long service leave (where applicable);
- superannuation; and
- accumulated sick leave (where applicable).

23. Employees of the Mount Isa Business Unit who accept early retirement will also receive:

- an ex-gratia payment equivalent to three months annual superannuation salary.

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 satisfied. 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 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 the employment because of the taxpayer attaining a certain age or completing a certain period of service.

29. Where the employer and the employee 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 with each other at arm's length.

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

31. It should be noted that not all payments detailed in paragraphs 22 and 23 will qualify as approved early retirement scheme payments.

Ruling

32. The early retirement scheme offered by the Mount Isa Business Unit is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

33. Accordingly, so much of the eligible termination payment (ETP) that 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

34. Where a scheme satisfies the requirements of section 27E of the ITAA 1936, that scheme will be an 'approved early retirement scheme.'

35. The Commissioner of Taxation (the Commissioner) has issued Taxation Ruling TR 94/12 titled '*Income tax: napproved early retirement scheme and bona fide redundancy payments*' which outlines the requirements for an approved early retirement scheme under section 27E.

36. Paragraph 14 of TR 94/12 states that three conditions must be satisfied for a scheme to qualify as an approved early retirement scheme payment. 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.

37. 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).

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

- all employees aged 55 and over of the Mount Isa Business Unit (as defined in paragraph 11) located in the unit's operational and administrative activities of Mount Isa, Townsville and Bowen.

39. 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).

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.

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 purpose of the scheme is described at paragraphs 18 to 20 of this ruling. The proposed scheme meets the requirements set out in subparagraphs 27E(1)(b)(ii), (v), and (vi); accordingly the second condition for approval has been met.

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

42. The scheme is proposed to operate from the date of notification of the ruling in the Commonwealth of Australia Gazette to 30 September 2002.

43. The scheme will be in operation for less than twelve months, which is within the period recommended in TR 94/12. The third condition is therefore satisfied.

Other relevant information

44. Under section 27E, so much of the payment received by a taxpayer under the approved early retirement scheme that exceeds the

amount that ordinarily would have been received on voluntary resignation or retirement is an approved early retirement scheme payment (that is, qualifies for concessional tax treatment).

45. 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 ITAA 1936):

- 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 were not at arm's length (for example, because they are related in some way) the amount of the payment does not exceed what would reasonably be expected to have been paid to the taxpayer if they had been at arm's length; and
- 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 the 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 employ the taxpayer after the date of termination.

46. 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.

47. By virtue of section 27CB of the ITAA 1936, an approved early retirement scheme payment made on or after 1 July 1994 that falls within the specified limit will be exempt from income tax and called the "tax-free amount."

48. For the year ending 30 June 2002, the tax-free amount is \$5 295 plus \$2 648 for each whole year of completed employment service to which the approved early retirement scheme relates. Please note that 6 months, 8 months or even 11 months does not constitute a

whole year for the purposes of this calculation. These amounts will be indexed for the year ending 30 June 2003.

49. For Mount Isa Business Unit employees who accept early retirement, the following payment qualifies as an approved early retirement scheme payment:

- ex-gratia payment equivalent to three month's annual superannuation salary.

50. For each employee, the total of the payment described in paragraph 49 will be measured against the limit calculated in accordance with paragraph 48 to determine the "tax-free amount."

51. 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.

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 subject to the provisions of the superannuation surcharge legislation, whether it is taken in cash or rolled-over.

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 Taxation

10 October 2001

<i>Previous draft:</i>	- ITAA 1936 27E(1)(a)(i)
Not previously issued in draft form	- ITAA 1936 27E(1)(a)(ii)
	- ITAA 1936 27E(1)(a)(iii)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 27E(1)(a)(iv)
CR 2001/1; TR 92/1; TR 92/20;	- ITAA 1936 27E(1)(a)(v)
TR 94/12	- ITAA 1936 27E(1)(a)
	- ITAA 1936 27E(1)(b)
<i>Subject references:</i>	- ITAA 1936 27E(1)(b)(i)
- Approved early retirement scheme	- ITAA 1936 27E(1)(b)(ii)
payments;	- ITAA 1936 27E(1)(b)(iii)
- eligible termination payments;	- ITAA 1936 27E(1)(b)(iv)
- eligible termination payment	- ITAA 1936 27E(1)(b)(v)
components	- ITAA 1936 27E(1)(b)(vi)
	- ITAA 1936 27E(1)(c)
<i>Legislative references:</i>	- ITAA 1936 27E(4)
- ITAA 1936 27A(1)	- ITAA 1936 27E(5)
- ITAA 1936 27CB	- TAA 1953 Part IVAAA
- ITAA 1936 27E	

ATO References

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