

CR 2001/53 - Income tax: Approved Early Retirement Scheme - NSW Department of Information Technology and Management

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Class Ruling

Income tax: Approved Early Retirement Scheme – NSW Department of Information Technology and Management

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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 are

- all employees of the NSW Department of Information Technology and Management

who receive a payment under the Voluntary Early Retirement Scheme described below in paragraphs 10 to 32.

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 32 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- (b) this Ruling may be withdrawn or modified.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 1 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:

- correspondence from Department of Information Technology and Management dated 12 July 2001;
- record of telephone conversation with a representative from the Department of Information Technology and Management dated 6 August 2001;
- correspondence from Department of Information Technology and Management dated 20 August 2001;
- record of telephone conversation with a representative from the Department of Information Technology and Management dated 13 September 2001; and
- correspondence from Department of Information Technology and Management dated 9 October 2001.

11. The NSW Department of Information Technology and Management (DITM) was formed on 8 April 1999 to ensure that government makes optimum use of information and technology to benefit the people of NSW.

12. With the establishment of DITM, seven administrative areas were brought together:

- Office of Information Technology;
- Land Titles Office;
- Valuer General's Office;
- Office of Western Sydney;
- Land Information Centre;
- Forestry Policy Unit; and
- Forestry Structural Adjustment Unit.

13. This consolidation required a review of the overall management structure of each of the former agencies to ensure potential benefits were realised in the future by the restructuring of various units, continued implementation of the Government's Corporate Services Reform Agenda and the continued improvement of

service provision through the use of technology and review of work practices.

14. A further streamlining of DITM was undertaken early in 2000 with the integration of the land related administrative areas to form Land and Property Information New South Wales (LPINSW) which was established on 1 July 2000 as a Government Business Enterprise (GBE).

15. It is anticipated that the Department's natural attrition rate will not necessarily achieve the required staff savings. The purpose of the early retirement scheme is to provide employees with the incentive to retire early.

16. All reasonable alternatives will be explored to ensure that the early retirement is the best option available and that voluntary redundancies are carried out in accordance with the Premier's Department "Policy on Displaced Employees".

17. No veto will be exercised on application for voluntary redundancy/early retirement except to ensure that the efficiency of the Department's operation is not adversely affected.

18. Officers offered early retirement will under the age of 65.

19. There will be no re-employment agreement with any employee who accepts a voluntary redundancy/early retirement package. It is intended that employees who accept voluntary redundancy/early retirement will not be re-employed after termination.

20. The relevant industrial awards or agreements that the employees of DITM were employed pursuant to include:

- Calm Skilled Trades, Operational and Field Staff (Rates of Pay) Enterprise Agreement;
- CMA Geodetic Survey Division Rules for Flexible Working Hours for Field Conditions;
- Crown Employees (Land Officers DLWC & DITM 1999) Award;
- Crown Employees (Administrative and Clerical Officers Salaries 2000) Award;
- Crown Employees (Public Service Conditions of Employment) Award 1997;
- Crown Employees Librarians Award
- Crown Employees Skilled Tradesman's Award;
- Crown Employees (Regional Directors and Valuers –all classes Valuer-Generals Office, Department of

Information Technology and Management) Award 1999;

- Legal Officers (Various Departments) Agreement Section 83 Agreement No 2375 of 1982;
- Titles Officer Land Titles Office Agreement No 2536 of 1991;
- Surveyors Trigonometrical and Cartographic Surveyors Agreement No 2449 of 1982;
- Surveyors Field Hands (State) Award; and
- Graphic Service Operators Department of Calm Enterprise Agreement 1993.

21. There is no normal retirement age for the Department's employees.

22. The Department requests that the scheme operate from 1 July 2001 until 30 June 2002.

23. Where employees accept voluntary redundancy, they are entitled to the following payments over and above what they normally would have received on resignation and/or retirement:

- four weeks notice or payment in lieu thereof;
- an additional one weeks notice or payment in lieu for employees aged 45 years and over, with 5 or more years of completed service; and
- severance pay at the rate of 3 weeks per year of continuous service with a maximum of 39 weeks.

24. In addition, those employees who accept an offer of voluntary redundancy within 2 weeks of the offer being made and terminate employment within the time nominated by the employer will be entitled to the following additional payments:

- less than 1 year of service – 2 weeks pay;
- 1 year and less than 2 years service – 4 weeks pay;
- 2 years and less than 3 years service – 6 weeks pay;
- 3 years service and over – 8 weeks pay.

25. The employees will also receive the following payments but these do not form part of the approved early retirement scheme payment:

- the benefit allowable as a contributor to a retirement fund;

- pro-rata annual leave loading in respect of leave accrued at date of termination.

Payments made under the Scheme

26. 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.

27. 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.

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

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

30. 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.

31. 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.

32. 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

33. The early retirement scheme offered by the NSW Department of Information Technology and Management (DITM) is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

34. 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

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

36. 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.

37. 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.

38. In order to satisfy the first condition, the scheme must be offered to all employees within one of the categories specified in subparagraph 27E(1)(a)(i) to (v).

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

- all employees of the Department of Information Technology and Management.

40. This class of employees comes within the class of employees in subparagraph 27(1)(a)(i). Therefore, the first condition has been satisfied.

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*

41. 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).

42. The purpose of the scheme is described at paragraphs 11 to 14 of this ruling. The purpose does not come within any of subparagraphs 27E(1)(b)(i) to (v), therefore it must be considered under subparagraph 27(1)(b)(vi), namely any other change to the operations of the employer or to the nature of the work-force of the employer approved by the Commissioner for the purposes of this paragraph. In approving this purpose, the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the employer. It is therefore considered that the purpose of the scheme meets the requirements of subparagraph 27E(1)(b)(vi).

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

43. The scheme is proposed to operate from 1 July 2001 to 30 June 2002. Since the implementation date has already passed, the scheme fails to meet the requirements of paragraph 27E(1)(c).

44. 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.

45. The Commissioner has fully considered the circumstances of this application and considers the case falls within special circumstances as set out in subsection 27E(2). Accordingly, the Commissioner will waive compliance with the third requirement of subsection 27E(1).

46. The scheme will be in operation for one year which is within the period recommended in TR 94/12.

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 limit will be exempt from income tax and called the "tax-free amount."

51. 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.

52. The total of the following payments qualify as an approved early retirement scheme payment:

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- four weeks notice or payment in lieu thereof;
- an additional one weeks notice or payment in lieu for employees aged 45 years and over, with 5 or more years of completed service;
- severance pay at the rate of 3 weeks per year of continuous service with a maximum of 39 weeks; and
- any additional payments as detailed in paragraph 24 for accepting and terminating employment at the nominated time.

53. The total of the payments described in the previous paragraph will be measured against the limit calculated in accordance with paragraph 51 to determine the “tax-free amount”.

54. 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.

55. 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.

56. 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.

57. 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

 24 October 2001

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| <i>Previous draft:</i> | - ITAA 1936 27E(1)(a) |
| Not previously issued in draft form | - ITAA 1936 27E(1)(b) |
| | - ITAA 1936 27E(1)(c) |
| <i>Related Rulings/Determinations:</i> | - ITAA 1936 27E(1)(a)(i) |
| CR 2001/1; TR 92/1; TR 92/20; | - ITAA 1936 27E(1)(a)(ii) |
| TR 94/12; TR 94/12E; TR 97/16 | - ITAA 1936 27E(1)(a)(iii) |
| | - ITAA 1936 27E(1)(a)(iv) |
| <i>Subject references</i> | - ITAA 1936 27E(1)(a)(v) |
| - approved early retirement scheme payments; | - ITAA 1936 27E(1)(b)(i) |
| - eligible termination payments | - ITAA 1936 27E(1)(b)(ii) |
| - eligible termination payments components | - ITAA 1936 27E(1)(b)(iii) |
| | - ITAA 1936 27E(1)(b)(iv) |
| | - ITAA 1936 27E(1)(b)(v) |
| | - ITAA 1936 27E(1)(b)(vi) |
| <i>Legislative references:</i> | - ITAA 1936 27E(4) |
| - TAA 1953 Part IVAAA | - ITAA 1936 27E(5) |
| - ITAA 1936 27A(1) | |
| - ITAA 1936 27E | |

ATO References

NO T2001/017239