



CR 2001/58 - Income tax: Approved Early Retirement Scheme - The Trustees of the Christian Brothers (Queensland)

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Class Ruling

Income tax: Approved Early Retirement Scheme – The Trustees of the Christian Brothers (Queensland)

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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

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 teachers currently employed by the Trustees of the Christian Brothers (Queensland) with a minimum of ten years full time continuous service in Catholic Schools in Queensland with at least six of the ten years served in schools owned by the Christian Brothers in Queensland,

and who receive a payment under the arrangement described below in paragraphs 10 to 21.

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 21 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 - (b) this Ruling may be withdrawn or modified.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 January 2002. 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 April 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:

- information supplied in correspondence dated 5 April 2001 from the Trustees of the Christian Brothers (Queensland), (the "Trustees");
- information supplied in correspondence dated 18 June 2001 from the Trustees;
- e-mail from the Trustees dated 28 September 2001; and
- a conversation held with a representative of the Trustees on 9 October 2001.

11. The Trustees are seeking approval for a proposed voluntary early retirement scheme ("VERS") under Section 27E of the ITAA 1936.

12. The Trustees, under Christian Brothers' Schools (Queensland), administer ten schools including primary and secondary Colleges in Queensland. One of their main functions is the employment of teachers at schools under their jurisdiction.

13. To assist novice teachers in obtaining positions and to assist older teachers into retirement, the Trustees propose to offer a VERS to existing teachers employed in their schools and colleges.

14. All vacancies produced as a result of the VERS will be filled only with graduate teachers or teachers with one year's teaching experience.

15. The introduction of graduate or first year teachers into schools and colleges administered by Christian Brothers' Schools (Queensland) is to provide them with teachers trained in the latest pedagogical methodologies, advanced human resources skills and technological developments.

16. It is proposed twenty positions will be available under the VERS and that the VERS operate from 1 January 2002 until 30 April 2002.

17. The VERS will be open to all teachers currently employed by the Trustees of the Christian Brothers (Queensland) with a minimum of ten years full time continuous service in Catholic Schools in Queensland with at least six of the ten years served in schools owned by the Christian Brothers in Queensland.

18. The VERS is limited to twenty positions and the selection of successful applicants will be on a first-in basis. Approval, however, will depend on the impact of their departure from the school, on subject areas taught, the level of any special skills they possess and other local considerations. This ensures no school suffers an insufficient level of skill and experience among its teachers.

19. The payment made under the scheme is as follows:

- two weeks' salary for every year's service, up to a maximum payment of \$30,000.

20. The successful applicants will also receive the following payments from the Trustees but these do not form part of an approved early retirement scheme payment:

- long service leave that is pro-rated on actual service accrued as at the date of retirement; and
- a full vesting of employer superannuation contributions in respect of the teachers' superannuation scheme (if applicable).

21. The Trustees confirm that all dealings between Christian Brothers' Schools (Queensland) and successful applicants will be at arm's length and there will be no agreement in place for the re-employment of departing employees.

Payments made under the Scheme

22. 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.

23. The payment must be an eligible termination payment made in relation to the employee in consequence of his or her employment being terminated under the approved early retirement scheme.

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

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

26. 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.

27. 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.

28. 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

29. The Voluntary Early Retirement Scheme offered by the Trustees of the Christian Brothers (Queensland) is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

30. 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

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

32. 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.

33. 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

34. 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).

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

- all teachers currently employed by the Trustees of the Christian Brothers (Queensland) with a minimum of ten years full time continuous service in Catholic Schools in Queensland with at least six of the ten years served in schools owned by the Christian Brothers in Queensland.

36. This class of employees does not come within any of subparagraphs 27E(1)(a)(i) to (iv), therefore it must be considered under subparagraph 27E(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 Christian Brothers' Schools (Queensland). 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).

37. It is noted that the Trustees retain a limited right of veto on VERS applications from teachers whose departure from a school or college would impact on the subject areas taught, the level of any special skills they possess and other local considerations. 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

38. 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).

39. The purposes of the Trustees voluntary early retirement scheme (VERS) are described at paragraphs 13 and 15 of this ruling. The proposed scheme meets the requirements set out in subparagraph 27E(1)(b)(i); accordingly the second condition for approval has been met.

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

40. The scheme is proposed to operate for a period from 1 January 2002 to 30 April 2002. The application for the scheme dated 5 April 2001 was received in this office on 17 April 2001. Approval for the scheme will be granted prior to implementation and therefore the third condition is satisfied.

41. The scheme will be in operation for four months, which is within the period recommended in TR 94/12.

Other relevant information

42. 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.

43. 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 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;

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- 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.

44. 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.'

45. 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."

46. 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.

47. The total of the following payment qualifies as an approved early retirement scheme payment and is exempt from tax within the limits described above:

- 2 weeks' salary for each completed year of service up to a maximum of \$30,000.

48. The total of the payment described in the previous paragraph will be measured against the limit calculated in accordance with paragraph 46 to determine the "tax-free amount".

49. 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.

50. 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.

51. 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.

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

Detailed contents list

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

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Commissioner of Taxation

31 October 2001

Previous draft:

Not previously issued in draft form

- 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 94/12; TR 97/16

- ITAA 1936 27E(1)(a)(i)

- ITAA 1936 27E(1)(a)(ii)

- ITAA 1936 27E(1)(a)(iii)

- ITAA 1936 27E(1)(a)(iv)

Subject references

- Approved early retirement scheme
payments;

- ITAA 1936 27E(1)(a)(v)

- 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)

Legislative references:

- TAA 1953 Part IVAAA

- ITAA 1936 27A(1)

- ITAA 1936 27E

- ITAA 1936 27E(4)

- ITAA 1936 27E(5)

ATO References

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