



CR 2001/61 - Income tax: Approved Early Retirement Scheme - Loy Yang Power Management Pty Ltd

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Class Ruling

Income tax: Approved Early Retirement Scheme - Loy Yang Power Management Pty Ltd

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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 Loy Yang Power Management Pty Ltd, who receive a payment under the arrangement described below in paragraphs 10 to 28.

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 28 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- (b) this Ruling may be withdrawn or modified.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 12 November 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 This Ruling is withdrawn and ceases to have effect after 28 February 2002.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 Loy Yang Power Management Pty Ltd dated 3 May 2001;
- facsimile from Loy Yang Power Management Pty Ltd dated 28 May 2001;
- facsimile from Loy Yang Power Management Pty Ltd dated 29 May 2001;
- record of telephone conversation with Loy Yang Power Management Pty Ltd on 6 June 2001;
- facsimile from Loy Yang Power Management Pty Ltd dated 26 June 2001;
- facsimile from Loy Yang Power Management Pty Ltd dated 3 October 2001;
- record of telephone conversation with Loy Yang Power Management Pty Ltd on 5 October 2001.

Note: certain information received from Loy Yang Power Management Pty Ltd has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

11. Loy Yang Power Management Pty Ltd is seeking approval for its proposed early retirement scheme.

12. The early retirement scheme is open from 12 November 2001 until 28 February 2002.

13. The electricity industry within Victoria has undergone significant restructuring commencing in the late 1980's with the outsourcing of non-core functions followed by privatisation of the core functions.

14. Loy Yang Power Management Pty Ltd was purchased by a partnership effective from 12 May 1997 with personnel transferring to Loy Yang Power Management Pty Ltd from other employers as of that date. It is not considered that Loy Yang Power Management Pty Ltd's workforce is at its optimum size.

15. Downsizing which has previously occurred within Loy Yang Power Management Pty Ltd has been as a result of significant cross skilling and job redesign and it is proposed that this process should continue in order to achieve the personnel reductions sought. It is anticipated that negotiation with appropriate unions regarding job redesign and retraining will take some time and it is considered that an approved early retirement scheme package should be available throughout the process.

16. All employees will be offered the opportunity to participate in the early retirement scheme.

17. Those employees who have their application accepted shall depart from Loy Yang Power Management Pty Ltd as soon as practical after they are advised of the acceptance of their application.

18. Loy Yang Power Management Pty Ltd pursues a policy that it will not enter into agreements or guarantees of employment with either third parties or the employees wishing to take a voluntary departure package.

19. Loy Yang Power Management Pty Ltd intends to invite offers from all employees. Should an employee in a key position apply for an early retirement package Loy Yang Power Management Pty Ltd will retain the right of veto in respect to that key employee.

20. The voluntary departure package to be paid to employees who accept voluntary retirement as a result of the early retirement scheme is as follows:

- (a) separation payment of two weeks pay for each year of completed continuous service and pro-rata for part years;
- (b) a lump sum sign on payment of \$40 000 available up until close of business on 31 December 2001, reducing to \$20 000 from 1 January 2002 until 28 February 2002;
- (c) six months salary as a lump sum; and
- (d) if no sick leave is taken between applying for the voluntary departure package and the agreed departure date an additional \$5 000 will be paid.

21. The employees will also receive the following payments from Loy Yang Power Management Pty Ltd but they do not form part of the approved early retirement scheme payment:

- (a) payment of accrued and pro-rata recreation leave;
- (b) payment of accrued long service leave; and
- (c) superannuation payments.

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 (ETP) 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 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.
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 departure package offered by Loy Yang Power Management Pty Ltd 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 (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

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 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).

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

- all employees of Loy Yang Power Management Pty Ltd.

36. It is therefore considered that these employees meet the requirements of an approved class of employees for the purposes of subparagraph 27E(1)(a)(i).

37. It is noted, however, that Loy Yang Power Management Pty Ltd will retain a right of veto over employees in a key positions. 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 scheme are described at paragraphs 13 to 15 of this ruling. The proposed scheme meets the requirements set out in subparagraphs 27E(1)(b)(i) and (vi); accordingly the second condition for approval has been met.

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

40. Application for approval of the scheme dated 3 May 2001, was received in this office on 4 May 2001. The scheme will be in operation from 12 November 2001 to 28 February 2002. Approval will be granted prior to implementation therefore the third condition is satisfied.

41. The scheme will be in operation for 3 months and 16 days 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 resignation or retirement 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 (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.

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 limit 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 payments qualify as an approved early retirement scheme payment:

- (a) separation payment of two weeks pay for each year of completed continuous service and pro-rata for part years;
- (b) a lump sum sign on payment of \$40 000 available up until close of business on 31 December 2001, reducing to \$20 000 from 1 January 2002 until 28 February 2002;
- (c) six months salary as a lump sum payment;
- (d) additional payment of \$5 000 where no sick leave is taken between applying for the voluntary departure package and the agreed departure date.

48. The total of the payments 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 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 applying for and being accepted for the early retirement under this scheme.

Detailed contents list

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

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Commissioner of Taxation7 November 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 27E(4)

- ITAA 1936 27A(1)

- ITAA 1936 27E(5)

- ITAA 1936 27E

ATO References

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