



CR 2001/72 - Income tax: Approved Early Retirement Scheme - National Australia Bank Ltd. Business Financial Services Division

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 November 2001*



Class Ruling

Income tax: Approved Early Retirement Scheme - National Australia Bank Ltd. Business Financial Services Division

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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 customer facing employees of the Business Financial Services ('BFS') division of the National Australia Bank Ltd, ('National') who have reached the age of 50 and are less than 65 years old, who receive a payment under the Voluntary Early Retirement Scheme described below in paragraphs 10 to 19.

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 19 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- (b) this Ruling may be withdrawn or modified.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 14 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 13 November 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 the National Australia Bank Ltd (National) dated 10 September 2001, 25 September 2001, 27 September 2001 and 13 November 2001;
- records of telephone conversations with representatives of the National on 14 September 2001, 19 September 2001, 20 September 2001, 27 September 2001, 28 September 2001, 8 October 2001, 16 October 2001 and 13 November 2001;
- Personnel Instructions Bank Officials' (Federal) (1963) Award Appendix B - National Australia Bank Limited;
- Personnel Instructions Bank Officials' (Long Service Leave) Award.

Note: certain information from the applicant has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

11. The National's current business model is similar to many other bancassurance models, comprising separate but vertically integrated banking and wealth management businesses trying to cross sell products to each other's customers via specialist retail channels.

12. The National intends to implement strategies within the business that will require different core skills and competencies.

13. Implementation of these strategies will require rationalising and rightsizing of the Business Financial Services (BFS) division of the National as well as recruitment of specialist resources. This will be achieved by means of retiring qualifying employees and recruiting resources who possess the skills necessary to implement the National's strategy. These resources will be recruited from both internal and external sources.

14. In response to this change in resource requirements, the National has developed a scheme for qualifying employees in BFS interested in taking early retirement. It is hoped this will provide a

mechanism to achieve the required reductions in employee numbers while minimising the forced displacement of employees.

15. As the skill requirements for positions held by employees in the respective age groups being considered under this early retirement scheme differ across the Business Banking Centres within BFS, a redeployment program is not a practical option.

16. Initially, participation in the early retirement scheme will be offered to all customer facing BFS employees who have reached the age of 54 and are less than 65 years old. Within a twelve month period, the National may extend this offer to include a further two phases. The first, to all customer facing BFS employees who are 52 or 53 years old, and the second, to all customer facing BFS employees who are 50 or 51 years old. Employees who have not attained 50 years of age are not included in the category of employees who may participate in the scheme.

17. The National will retain a limited right of veto on accepting applications for early retirement from key personnel who cannot be readily replaced and whose loss would impair the operations of the BFS division. This will include the situation where an expression of interest in the scheme is received from all eligible staff in a particular Business Banking Centre and acceptance of those expressions of interest will have a detrimental impact on the efficient operations of that centre.

18. In each phase employees are able to express interest in participating in the scheme for a period of two weeks following the issue of letters outlining the terms and conditions of the scheme. Within one week National will forward to employees a schedule outlining their specific entitlements, except for key personnel who will be advised they are not eligible for early retirement. Employees then have three weeks to review this data, seek financial advice, and confirm their acceptance. Once confirmation has been received from an employee, the National will take one week to finalise the termination of employment. For each phase any employee who is absent on leave will be entitled to lodge an expression of interest when they return from leave.

19. Employees who accept the offer of early retirement will receive the following:

- **six weeks' total remuneration package (TRP) as pay in lieu of notice;**
- **a lump sum payment of \$15 000;**
- payment of all accrued but unused long service leave (and Bank extended leave) on the basis of the employee's TRP, as at the date of cessation of employment;

- payment of unused annual leave; and
- superannuation.

It should be noted that only the highlighted payments form part of the approved early retirement scheme.

Payments made under the Scheme

20. 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.

21. 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.

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

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

24. 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.

25. 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.

26. 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

27. The early retirement scheme offered by the National is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

28. 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

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

30. 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.

31. 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

32. 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).

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

- all customer facing employees of the Business Financial Services (BFS) division of the National Australia Bank Limited who have reached the age of 54 and are less than 65 years old, with an option to include

all customer facing employees who have reached 50 years of age and are less than 65 years old.

34. 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 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

35. 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).

36. The purpose of the scheme is described in paragraphs 12 to 14 of this ruling.

37. The proposed scheme is being implemented by the National to rationalise the BFS division by means of replacing the retiring employees with employees that possess the skills to sell a broad range of banking, wealth creation and wealth protection products. This satisfies the requirements of subparagraph 27E(1)(b)(i).

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

38. The National was granted approval on 14 November 2001 to commence issuing letters to employees from 19 November 2001 seeking expressions of interest to participate in the scheme. The third condition for approval has therefore been satisfied.

Other relevant information

39. 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.

40. 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.

41. 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.'

42. 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."

43. 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. The \$5 295 and \$2 648 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

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

- six weeks TRP as pay in lieu of notice; and
- a lump sum payment of \$15 000.

45. The total of the payments described in the previous paragraph will be measured against the limit calculated in accordance with paragraph 43 to determine the “tax-free amount”.

46. 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.

47. 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.

48. 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.

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

Detailed contents list

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

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Commissioner of Taxation

28 November 2001

<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 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)
	- ITAA 1936 27E(1)(b)(ii)
- eligible termination payments	- ITAA 1936 27E(1)(b)(iii)
- eligible termination payments components	- 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

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