

CR 2001/83 - Income tax: Approved Early Retirement Scheme - Water Corporation (Western Australia)

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *19 December 2001*



Class Ruling

Income tax: Approved Early Retirement Scheme – Water Corporation (Western Australia)

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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*.

Class of persons

3. The class of persons to whom this Ruling applies is
- all construction workers, tradespeople, maintenance workers, plant operators, plant coordinators and rangers who are 55 to 64 years of age (inclusive), located in Great Southern, Agricultural or Bulk Water and Wastewater Division

who receive a payment under the arrangement described below in paragraphs 10 to 25.

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 25 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 - (b) this Ruling may be withdrawn or modified.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 19 December 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 18 December 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 Water Corporation (Western Australia) dated 29 October 2001;
- record of telephone conversation with a representative of the Water Corporation (Western Australia) on 26 November 2001;
- e-mail from the Water Corporation (Western Australia) dated 27 November 2001.

11. The Water Corporation (Western Australia) is seeking approval for an early retirement scheme.

12. The Water Corporation has undertaken workforce planning in the past twelve months, which has identified issues relating to the age demographic of the workforce in three locations, namely Great Southern Region, Agricultural Region and Perth Metropolitan area.

13. The specific issues relate to the work force where technology has required the need for different skills and the transformation of the workforce. The Water Corporation has found that natural attrition is not resulting in a timely transformation and is now proposing an Early Retirement Program.

14. The Early Retirement Program will encourage employee retirement whilst respecting their years of service and will allow for the employment of trainees or apprentices, or other potential employees with the required skill/competency mix or experience to commence and refresh the workforce.

15. The number of staff eligible for the Early Retirement Program will be 44 employees.

16. The Water Corporation reserves the right to veto any application for the Early Retirement Program where it can be substantiated that the application is from key personnel who cannot be readily replaced and whose loss would impair the efficiency of the employer's business operations.

17. The Early Retirement Program would operate from 19 December 2001 until 18 December 2002.

18. The payment for the Early Retirement Program will be equivalent to the enhanced severance payment being offered to employees whose position has been made redundant. This payment is based upon the Water Corporation Redeployment, Retraining and Redundancy Agreement 1996:

- Employees with less than 5 years service - 2 weeks for each year of service; or
- Employees with 5 to 9 years service - 2.25 weeks for each year of service; or
- Employees with 10 or more years service - 2.5 weeks for each year of service (capped at 50 weeks); and
- If the employee leaves within 4 weeks of approval of application - 12 weeks pay; or
- If the employee leaves within 8 weeks of approval of application - 4 weeks pay; and
- A transition payment of \$5 000.

Payments made under the Scheme

19. 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.

20. 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.

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

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

23. 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.

24. 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.

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

Ruling

26. The Early Retirement Program offered by the Water Corporation (Western Australia) is an approved early retirement scheme for the purposes of section 27E of the *Income Tax Assessment Act 1936*.

27. 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

28. Where a scheme satisfies the requirements of section 27E of the *Income Tax Assessment Act 1936* (the Act) that scheme will be an 'approved early retirement scheme.'

29. 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.

30. 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

31. 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).

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

- all construction workers, tradespeople, maintenance workers, plant operators, plant coordinators and rangers who are 55 to 64 years of age (inclusive), located in Great Southern, Agricultural or Bulk Water and Wastewater Division.

33. This class of employees is considered to have met the requirements of subparagraph 27E(1)(a)(iv), that is, all employees of the employer who have a particular occupational skill and who have attained a particular age.

34. The Water Corporation (Western Australia) retains a limited right of veto with regards to the early retirement scheme which means that it can veto applications by personnel who cannot readily be replaced and whose loss would impair the efficiency of the Water Corporation (Western Australia's) business operations. This veto 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

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 purposes of the scheme is described at paragraphs 12 to 14 of this ruling. The proposed scheme meets the requirements set out in subparagraphs 27E(1)(b)(i) and (ii); accordingly the second condition for approval has been met.

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

37. The scheme will remain open from 19 December 2001 to 18 December 2002. Approval of the scheme was given prior to this date, therefore the third condition is satisfied.

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

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 resignation or retirement 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 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 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.'

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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.

44. The total payment calculated in accordance with paragraph 18 qualifies as an approved early retirement scheme payment.

45. This payment 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

 19 December 2001

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

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