CR 2002/55 - Income tax: Approved Early Retirement Scheme - South Australian Government

Class Ruling
Income tax: Approved Early Retirement Scheme – South Australian Government

Contents Para

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.

2. Broadly, this Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for persons receiving payments under the scheme. There are many conditions attached to this Ruling and readers should be careful to ensure that these conditions are met before relying on this Ruling.

Tax law(s)

3. The tax laws dealt with in this Ruling are section 27E and 27CB of the *Income Tax Assessment Act 1936* ('ITAA 1936').

Class of persons

4. The class of persons to which this Ruling applies is:

(a) employees of the South Australian Government who are excess, or employees who are part of a group where some or all of the employees are excess;

(b) any employee who is similarly classified or skilled to employees designated in (a) above who could be separated to enable the necessary workforce reduction through redeployment of excess employees; or

(c) employees who are covered by the South Australian Government Wages Parity Enterprise Agreement 2001 or are employed in agencies and employee groups which have special Cabinet or Commissioner for Public Employment (CPE) approval to access the Targeted Voluntary Separation Package (TVSP) scheme and receive a payment under the arrangement described below in paragraphs 13 to 37.

Note: for these purposes employees are excess where they are substantially under utilised or no longer required, or able to perform their assigned tasks. This may be due to changes in the nature or extent of work required or because the employees no longer have the required skills to undertake assigned tasks.

5. Packages under the scheme are not designed to be offered to employees who possess relevant skills but choose not to use them. The performance of such employees should be dealt with through normal performance management processes.

Qualifications

6. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

7. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 13 to 37 in this Ruling.

8. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:

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

Date of effect

11. This Ruling applies from 12 August 2002 unless and until it is withdrawn (see paragraph 12 of this Ruling). However, this 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 this Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore this Ruling applies to the extent that the relevant tax laws are not amended.

Withdrawal

12. This Ruling is withdrawn and ceases to have effect after 8 September 2003. 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

13. 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 CPE.

14. The CPE is seeking approval for an early retirement scheme known as the TVSP scheme.

15. The TVSP scheme forms part of a range of human resource management measures designed to facilitate public sector change for:

(a) the purposes of providing more efficient services to the South Australian community; and

(b) the purpose of the TVSP scheme is to assist agencies to meet budget targets by reducing numbers of excess employees.

16. The scheme applies to employees covered by the South Australian Government Wages Parity Enterprise Agreement 2001 or employed in agencies and employee groups having special Cabinet or CPE approval to access the TVSP scheme. Any public sector agency may seek Cabinet approval to access the scheme. Cabinet approval may authorise agencies to be reimbursed for TVSP payments by the Department of Treasury and Finance (DTF).

17. The scheme will operate for a period from 12 August 2002 to 8 September 2003 with the period during which packages may be offered by agencies ending on 11 August 2003.

18. The TVSP scheme is the only separation scheme authorised and available to assist approved agencies to reduce workforce numbers.

19. The scheme will provide agencies with delegated authority to offer TVSPs. Agencies seeking to use the scheme are required to submit workforce plans to the CPE, and the CPE in conjunction with the DTF will then review the option of delegating the detailed allocation and management of an approved number of TVSPs to the agency.

20. Agencies may seek an indication of who would be interested in requesting an offer prior to decisions being taken on offers to be made.

21. Agencies are required to consult with the appropriate industrial associations, job representatives and employees on the nature of workforce reductions.

22. Where agencies are predominantly funded by State Government appropriations the scheme is to be funded from a central fund jointly administered by the Office of the CPE and the DTF. Government businesses that have commercial objectives and generate the majority of their revenues from non-government sources will be expected to self-fund TVSP payments. Other termination leave payments will be met from within an agency's existing budget.

23. Under the scheme, employees who meet requirements may, following consideration for redeployment, either be redeployed or invited to request an offer of a separation package.

24. Casual employees and employees with no right to ongoing employment in the South Australian public sector are not eligible to participate.

25. A person employed on contract may be eligible to participate if they have a right to ongoing employment in the South Australian public sector and the position to which they are entitled to return at the end of the contract has become excess to requirements.

> Note: for the purposes of this ruling, a 'person' employed on 'contract' is assumed to be a person employed on a contract for service and not a sub-contractor, since the latter is not an 'employee'.

26. Participation by employees is strictly voluntary.

27. The payments under the scheme are:

(a) stage 1: a minimum payment of 8 weeks plus 3 weeks pay for each completed year of service, with a maximum payment of 104 weeks pay, if employees having requested an offer, resign and separate within 4 weeks of a formal offer being made; or

(b) stage 2: a minimum payment of 4 weeks pay plus 2 weeks pay for each completed year of service, with a maximum payment of 52 weeks pay, if employees having requested an offer, resign and separate more than 4 weeks after a formal offer is made.

28. The quantum of separation payments for Executives will be negotiated between themselves and the CPE in accordance with CPE guidelines for such payments.

29. A formal offer and payment under the proposed scheme is conditional upon the employee voluntarily giving notice of resignation and actually resigning from the public sector. In special circumstances the resignation may become effective on a specific date agreed with the agency which is more than four weeks after the making of a formal offer.

30. The proposed scheme does not include any payment in lieu of superannuation benefits.

Payments made under the Scheme

31. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the conditions set out in paragraphs 32 to 37 must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

32. 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.

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

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

35. 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.

36. 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.

37. 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

38. The TVSP scheme offered by the South Australian Government is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

39. Accordingly, so much of the 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

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

41. 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.

42. 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

43. 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).

44. The class of employees to which the scheme is proposed to be offered is:

(a) employees who are excess, or employees who are part of a group where some or all of the employees have become excess; or

(b) any employee who is similarly classified or skilled to employees designated in (a) above who could be separated to enable the necessary workforce reduction through redeployment of excess employees;

who are covered by the South Australian Government Wages Parity Enterprise Agreement 2001 or are employed in agencies and employee groups which have special Cabinet or CPE approval to access the TVSP scheme.

45. 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).

46. It is noted, however that the South Australian Government retains a limited right of veto to be applied to applications by key personnel who can not be readily replaced and whose loss would impair the efficiency of the South Australian public sector as a whole. 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

47. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer by means of one or more of the objectives set out in subparagraphs 27E(1)(b)(i) to (vi).

48. Paragraph 15 describes the nature of the rationalisation or reorganisation of operations. In approving the objectives of the scheme, although the nature of the rationalisation or re-organisation of the employer's operations does not fit within one of the specific objectives identified in subparagraphs 27E(1)(b)(i) to (v), the Commissioner has had regard to the fact that the re-organisation is being implemented with a view to a restructuring of the work force or operations of the employer. It is therefore considered that the scheme is to be implemented by the employer with a view to rationalising or re-organising the operations of the employer for the purposes of subparagraph 27E(1)(b)(vi).

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

49. The scheme is proposed to operate from 12 August 2002 to 8 September 2003. The scheme meets the requirement of paragraph 27E(1)(c).

50. The scheme will be in operation for approximately 13 months which is acceptable to the Commissioner.

Other relevant information

51. 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.

51. 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 ITAA 1936):

- 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.

52. 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.'

53. 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'.

54. For the year ended 30 June 2003, the tax-free amount is limited to $5,623 plus $2,812 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.

55. The following payment qualifies as an approved early retirement scheme payment:

- the amount received on termination calculated in accordance with paragraph 27.

56. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 55 to determine the 'tax-free amount'.

57. 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.

58. 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.

59. 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.

Detailed contents list

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

Commissioner of Taxation
21 August 2002

Previous draft:
Not previously released in draft form

Related Rulings/Determinations:
CR 2001/1; TR 92/1; TR 92/20; TR 97/16; TR 94/12

Subject references:
- approved early retirement scheme payments
- eligible termination payments
- eligible termination payments components

Legislative references:
- TAA 1953 Pt IVAAA
- ITAA 1936 27A(1)
- ITAA 1936 27CB
- ITAA 1936 27E
- ITAA 1936 27E(1)(a)
- ITAA 1936 27E(1)(b)
- ITAA 1936 27E(1)(c)
- ITAA 1936 27E(1)(a)(i)
- ITAA 1936 27E(1)(a)(ii)
- ITAA 1936 27E(1)(a)(iii)
- ITAA 1936 27E(1)(a)(iv)
- ITAA 1936 27E(1)(a)(v)
- ITAA 1936 27E(1)(b)(i)
- ITAA 1936 27E(1)(b)(ii)
- ITAA 1936 27E(1)(b)(iii)
- ITAA 1936 27E(1)(b)(iv)
- ITAA 1936 27E(1)(b)(v)
- ITAA 1936 27E(1)(b)(vi)
- ITAA 1936 27E(4)
- ITAA 1936 27E(5)
- Copyright Act 1968

ATO References
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