

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

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Addendum

Income tax: Approved Early Retirement Scheme – South Australian Government

This Addendum amends Class Ruling CR 2002/55 with effect from today to:

- correct the paragraph reference to the detailed contents list in the table of contents;
- clarify the class of persons to which the ruling applies;
- tidy up the wording of paragraph 15(b);
- correct the misnumbering of paragraphs 51 to 59 (now paragraphs 51 to 60) caused by having two paragraphs numbered 51;
- to make some minor adjustments to improve the readability of the ruling, namely to spell out what ETP stands for, and to add a reference to paragraph 28 in the paragraph now numbered 56; and
- correct the paragraph reference to '*Other relevant information*' in the Detailed contents list.

Class Ruling CR 2002/55 is amended as follows:

Omit contents table and substitute with:

Contents	Para
What this Class Ruling is about	1
Date of effect	11
Withdrawal	12
Arrangement	13
Ruling	38
Explanations	40
Detailed contents list	61

Omit paragraph 4 and substitute with:

4. The class of persons to which this Ruling applies 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 employees who are 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 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 are no longer:

- required to perform their assigned tasks; 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.

Omit paragraph 15 and substitute with:

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

- (a) providing more efficient services to the South Australian community; and
- (b) assisting agencies to meet budget targets by reducing numbers of excess employees.

Omit paragraphs 51 to 59 and substitute with:

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.

52. 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 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.

53. 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.'

54. 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'.

55. For the year ending 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.

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

- the amount received on termination calculated in accordance with paragraph 27 or 28.

57. 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'.

58. 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.

59. 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.

60. 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.

Omit paragraph 60 and substitute with:

Detailed contents list

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

	Paragraph
What this Class Ruling is about	1
Tax law(s)	3
Class of persons	4
Qualifications	6
Date of effect	11
Withdrawal	12
Arrangement	13
The Scheme	13
Payments made under the scheme	31
Ruling	38
Explanations	40
<i>1. The scheme must be offered to all employees within a class identified by the employer</i>	43

<i>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</i>	47
<i>3. The scheme must be approved by the Commissioner prior to implementation</i>	49
<i>Other relevant information</i>	51
Detailed contents list	61

Commissioner of Taxation

4 December 2002

ATO References
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