



CR 2002/79 - Income tax: Approved Early Retirement Scheme - Pasminco Australia Limited, Rosebery Mine

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Class Ruling

Income tax: Approved Early Retirement Scheme – Pasminco Australia Limited, Rosebery Mine

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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.
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 sections 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:
 - all employees of Pasminco Australia Ltd (‘Pasminco’) located at the Rosebery Mine in Tasmania.

who receive a payment under the arrangement described below in paragraphs 12 to 31.

Qualifications

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
6. 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 12 to 31 in this Ruling.
7. 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 - (b) this Ruling may be withdrawn or modified.
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9. A copy of this Ruling must be given to all employees eligible to participate in the approved early retirement scheme.

Date of effect

10. This Ruling applies from 1 November 2002 unless and until it is withdrawn (see paragraph 11 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

11. This Ruling is withdrawn and ceases to have effect after 31 October 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

12. 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 a representative of Pasminco; and
- record of telephone conversations with a representative of Pasminco.

13. Pasminco is seeking approval for an early retirement scheme.

14. Pasminco Rosebery Mine is a business division of Pasminco, which is undertaking a Surface Decline Project. This will reduce recurrent costs and enhance production and revenue opportunities.

15. The Surface Decline Project will enable significantly improved access to the underground ore body by allowing full vehicle access from the surface to the underground workings. The current process requires all large mine plant and equipment to be dismantled and transported underground via the internal shaft before being re-assembled in underground workshops.

16. It is expected that the Surface Decline Project will:

- allow the sub-surface mining of a previously inaccessible ore body;
- lead to improved ore-handling efficiencies from trucking the lower mine ore directly to the surface;

- reduce recurrent maintenance costs from the decommissioning of the internal shaft and winder, the rail fleet and the underground crusher; and
- simplify the mine's stores and logistics function.

17. The introduction of the new work processes, improved efficiencies and decommissioning of the underground infrastructure mean that fewer employees will be needed to work at the mine.

18. Pasminco is proposing an early retirement scheme to be offered to all employees located at the Rosebery Mine as the first step in obtaining the necessary workforce reductions.

19. Pasminco will endeavour to accommodate all employees wishing to accept early retirement. However, due to the specialised skills required in some positions Pasminco retains a limited right of veto on key personnel whose loss would be detrimental to the operations of the mine.

20. Under the scheme employees will receive a payment calculated in accordance with:

- (i) the Pasminco Staff Redundancy Policy – for non-award staff;
- (ii) the Pasminco Rosebery Mine 2002 Agreement; or
- (iii) the Pasminco Rosebery Mine 2001 Redundancy Industrial Agreement.

The Pasminco Staff Redundancy Policy for non-award staff

Payment under the Pasminco Staff Redundancy Policy is calculated on the basis of age and number of years' service, plus payment in lieu of notice subject to certain qualifications:

Redundancy Payment Formula

Age	Number of weeks remuneration for each year of service (or part thereof)
44 and under	2.50
45	2.75
46	3.00
47	3.25
48	3.50
49 and over	3.75
Minimum number of weeks	13 weeks
Maximum number of weeks	78 weeks

Plus payment in lieu of Notice

Unless the employment contract specifies a longer notice period:

Employees	1 month
Managers	2 months
General Managers/Executives	3 months

The following minimum payments apply to the sum of the redundancy formula and notice period:

Minimum Payments (inclusive of Pay in lieu of Notice)

Employees (Up to Grade 10)	18 weeks
Employees (Grades 11-12)	26 weeks
Managers (Grades 13-15)	39 weeks
General Managers/Executives	52 weeks

The Pasminco Rosebery Mine 2002 Agreement

Payment under the Pasminco Rosebery Mine 2002 Agreement is calculated on the basis of the number of years of continuous service as follows:

Payment in lieu of Notice

Period of Continuous Service	Period of Notice
1 year or less	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

Plus an additional 5 weeks.

In addition to the amounts provided above, employees over 45 years of age at the time of retirement with not less than two years continuous service shall be entitled to payment of an additional week's notice.

The Pasminco Rosebery Mine 2001 Redundancy Industrial Agreement

Payment under the Pasminco Rosebery Mine 2001 Redundancy Industrial Agreement is calculated on the basis of completed years of service as follows:

<u>Criteria</u>	<u>Entitlement</u>
First 1 – 10 completed years of service	2 weeks pay per year of completed service
10 – 15 completed years	20 weeks pay + 2.5 weeks per

of service	year in excess of 10 completed
years of service	
Greater than 15 years	32.5 weeks pay + 3 weeks per
of service	year in excess of 15 completed
	years of service

21. Employees who accept early retirement may also receive payment for accrued annual leave and long service leave. These amounts will not form part of the approved early retirement scheme payment.

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 conditions set out in paragraphs 26 to 31 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 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.

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

30. 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.

31. In addition, so much of the approved early retirement scheme payment as falls within the threshold calculated in accordance with subsection 27A(19) of the ITAA 1936 is non-assessable and is ignored in working out whether a capital gain has been made via the operation of section 27CB of the ITAA 1936.

Explanations

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

33. 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.

34. 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

35. 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).

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

- All employees of Pasminco located at the Rosebery Mine in Tasmania.

37. This class does not come within any subparagraphs of 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 considered that these employees meet the requirements of an approved class of employees for the purposes of subparagraph 27E(1)(a)(v).

38. Pasminco retains a limited right of veto with regards to the early retirement scheme which means that it can veto applications by key personnel who will be required to continue work so the operations of the mine will not be adversely affected. 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

39. 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).

40. The purpose of this scheme is set out at paragraph 14 to 17 of this ruling. The objectives of the scheme is rationalising the employer's operations because of a change in its processes and system which carries with it an efficiency increase. This satisfies the requirements of subparagraph 27E(1)(b)(v).

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

41. The scheme is to operate from 1 November 2002 to 31 October 2003. The Commissioner has approved the scheme prior

to its implementation. Accordingly, the requirement of paragraph 27E(1)(c) has been satisfied.

42. The scheme will be in operation for twelve months which is within the period recommended in paragraph 28 of Taxation Ruling TR 94/12.

Other relevant information

43. 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.

44. 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.

45. 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.’

46. 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’.

47. 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. The \$5,623 and \$2,812 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

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

- the amount received on early retirement calculated in accordance with paragraphs 21, 22 or 23 depending on the arrangement under which the employee is covered.

49. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 50 to determine the ‘tax-free amount’.

50. 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.

51. 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.

52. 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

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

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Commissioner of Taxation

30 October 2002

<i>Previous draft:</i>	- ITAA 1936 27CB
Not previously issued in draft form.	- ITAA 1936 27E
	- ITAA 1936 27E(1)(a)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 27E(1)(b)
CR 2001/1; TR 92/1; TR92/20;	- ITAA 1936 27E(1)(c)
TR 97/16; TR 94/12	- ITAA 1936 27E(1)(a)(i)
	- ITAA 1936 27E(1)(a)(ii)
<i>Subject references:</i>	- ITAA 1936 27E(1)(a)(iii)
- approved early retirement scheme	- ITAA 1936 27E(1)(a)(iv)
payments	- ITAA 1936 27E(1)(a)(v)
- eligible termination payments	- ITAA 1936 27E(1)(b)(i)
- eligible termination payments	- ITAA 1936 27E(1)(b)(ii)
components	- ITAA 1936 27E(1)(b)(iii)
	- ITAA 1936 27E(1)(b)(iv)
<i>Legislative references:</i>	- ITAA 1936 27E(1)(b)(v)
- ITAA 1936 27A(1)	- ITAA 1936 27E(1)(b)(vi)
- ITAA 1936 27A(19)	- ITAA 1936 27E(4)

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- ITAA 1936 27E(5)
- Copyright Act 1968

ATO References

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