

# ***CR 2002/9 - Income tax: Approved Early Retirement Scheme - Victoria Police - Property and Warehouse Branch***

 This cover sheet is provided for information only. It does not form part of *CR 2002/9 - Income tax: Approved Early Retirement Scheme - Victoria Police - Property and Warehouse Branch*

 This document has changed over time. This is a consolidated version of the ruling which was published on *1 March 2002*



## **Class Ruling**

### **Income tax: Approved Early Retirement Scheme – Victoria Police - Property and Warehouse Branch**

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#### ***Preamble***

*The number, subject heading, and the **What this 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**

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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.

#### **Tax law**

3. The tax law dealt with in this Ruling is section 27E of the *Income Tax Assessment Act 1936* (‘ITAA 1936’).

#### **Class of persons**

4. The class of persons to whom this Ruling applies are employees at the PAO 1, PAO 2 and PAO 3 levels of the Property and Warehouse Branch of Victoria Police who receive a payment under the arrangement described below in paragraphs 12 to 30.

## 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 described below at paragraphs 12 to 30 is carried out in accordance with the details of the arrangement provided in this Ruling.
7. 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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The Manager  
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GPO Box 1920  
CANBERRA ACT 2601.
9. A copy of this Ruling must be given to all employees eligible to participate in the approved early retirement scheme.

## Date of effect

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10. This Ruling applies from 1 March 2002.

## Withdrawal

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11. This Ruling is withdrawn and ceases to have effect after 30 June 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**

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### **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 Victoria Police dated 8 January 2002;
- record of telephone conversation with a representative of Victoria Police dated 4 February 2002; and
- record of telephone conversation with a representative of Victoria Police dated 13 February 2002.

13. Emanating from a Supply Division Work Reform Project undertaken by Victoria Police in early 2001, an amalgamation of the existing Warehouse, Central Property Management Branch and the Instant Print Centre together with the Inventory/Purchasing and Operations and Administration Support area resulted in the establishment of the Property and Warehouse Branch.

14. The review identified a staged implementation that will lead to a more strategic and streamlined focus on the combined functions of the Property Warehouse Branch.

15. The project was undertaken to adopt a service delivery model where the majority of clients could access all services from one central point.

16. It is anticipated that a number of positions at the PAO1, PAO 2 and PAO 3 levels will be affected by the review outcome. It is the intention of Victoria Police to offer Voluntary Departure Packages (VDPs) to these staff.

17. The Department intends to approve a maximum of five VDPs. If less than five expressions of interest are received, all requests will be approved. If more than five expressions are received, the Department will retain a limited right to veto to be applied to key personnel whose loss would impair the efficiency of the branch.

18. All VDP payments and conditions will be in accordance with the current Victorian Government's guidelines.

19. To be eligible to express interest in a VDP, employees must meet the following criteria:

- be less than 65 years of age;
- be on the payroll and not on any form of unpaid leave;
- not be in receipt of non-medical work cover payments; and
- be employed on an open-ended and continuing basis.

20. All Victoria Police staff are employed in accordance with the *Public Sector Management and Employment Act 1998* (Vic.).

21. The offer of a VDP to eligible Property & Warehouse Branch staff will be made as soon as Australian Tax Office (ATO) approval is granted.

22. The offer of a VDP to Business Management Department employees will be available for approximately four months from the date of approval of the scheme. Anticipated departure dates would be arranged as soon as possible following the employee's acceptance.

23. The benefit payable will comprise:

- a flat payment of 4 weeks pay at the employee's substantive rate of ordinary time pay immediately before resignation;
- two weeks pay per year of service to a maximum of fifteen years (30 weeks pay); and
- a lump sum voluntary departure incentive of up to \$10,000.

## **Payments made under the Scheme**

24. 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.

25. 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.

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

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

28. 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.

29. 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.

30. 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**

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

32. 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**

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

34. 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.

35. 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)).<sup>7</sup>

***1. The scheme must be offered to all employees within a class identified by the employer***

36. 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).

37. The class of employees to whom the scheme is proposed to be offered is set out in paragraph 4.

38. 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).

39. It is noted that Victoria Police retains a limited right of veto to be applied to applications by key personnel who cannot readily be replaced and whose loss would impair the efficiency of the Property and Warehouse Branch's operations. 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***

40. 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).

41. The purpose of the scheme is described at paragraphs 13 to 16 of this Ruling. The proposed scheme meets the requirements set out in subparagraphs 27E(1)(b)(iii), (iv) and (vi); accordingly the second condition for approval has been met.

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

42. The scheme is proposed to operate from 1 March 2002. The scheme will be in operation for four months, which is within the period recommended in TR 94/12. The third condition is therefore satisfied.

***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 retirement or resignation 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 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.

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 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.

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

- the amount received on termination calculated in accordance with paragraph 23.

49. The amount of the payment in the previous paragraph will be measured against the limit calculated in accordance with paragraph 47 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**

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

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### **Commissioner of Taxation**

27 February 2002

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<i>Previous draft:</i>	- ITAA 1936 27E(1)(a)
Not previously released 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; TR 94/12; TR 94/12E	- ITAA 1936 27E(1)(a)(iii)
	- 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	

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FOI status: **may be released**

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## ATO References

NO: T2002/002419

ISSN: 1445 2014