

# ***CR 2003/59 - Income tax: Approved Early Retirement Scheme - NSW Police***

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *1 August 2003*



## **Class Ruling**

### **Income tax: Approved Early Retirement Scheme – NSW Police**

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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**

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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 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 employees of NSW Police who are:
  - over 45 years of age and under 55 years of age at the time of early retirement;
  - having at least 20 years of equivalent full-time service at the time of early retirement;

- of or below the rank of Senior Sargent for the first stage (from August 2003), and generally of or below the rank of Chief Inspector for the second and third stage (from January 2004 to August 2004);
- having a level of officer survival skills below that required for operational policing;
- having a limited capacity to adapt or enhance skills in the use of technology; and

who receive a payment under the arrangement described in paragraphs 12 to 26.

## 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 in paragraphs 12 to 26.
7. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:
  - (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**

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10. This Ruling applies from 1 August 2003 unless and until it is withdrawn (see paragraph 11). 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**

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11. This Ruling is withdrawn and ceases to have effect after 31 August 2004. 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 this 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 NSW Police.

13. NSW Police is seeking approval for an early retirement scheme.

14. As a result of a Royal Commission, NSW Police has re-evaluated and reviewed its function and operations. NSW Police wishes to increase the number of constables and sergeants to be uniformed and attached to patrols, thereby increasing the numbers on the front line. This will be achieved by the return to operational duties of police presently carrying out clerical and administrative duties. NSW Police recognises that the focus and emphasis on front-line policing means that some officers, who have attained a certain age and performed administrative duties in the past, may not have the necessary skills such as university qualifications and environmental

awareness to satisfactorily perform operations duties required of modern day police officers.

15. The purpose of the scheme is to provide an opportunity for 300 police officers to retire early, as a direct consequence of those employees no longer having the requisite skills to carry out front line policing duties, use up to date technology and participate in the delivery of modern policing practices.

16. NSW Police will offer 300 early retirement opportunities in three stages as follows:

Phase 1 - A maximum of 100 separations from August 2003;

Phase 2 - A maximum of 100 separations in January 2004; and

Phase 3 - A maximum of 100 separations in August 2004.

17. Officers who do not satisfy a probity check will not be eligible to participate in the scheme.

18. Where more than 100 eligible applications are received in any one stage the 100 applicants to separate will be determined by aggregating the officer's age, equivalent full time service and time since the officer's last promotion. Of the officers wishing to participate the 100 officers with the highest aggregates will receive a payment.

19. The payment under the scheme is equivalent to a maximum of 39 weeks of normal salary.

## **Payments made under the Scheme**

20. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the conditions set out in paragraphs 21 to 26 must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

21. 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.

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

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

24. 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.

25. Where the employee and the employer are not dealing with each other at arm's length (e.g. 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.

26. 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**

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

28. 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.

29. 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.

## **Explanation**

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

31. 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.

32. 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**

33. 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).

34. The class of employees to which the scheme is proposed to be offered is employees of NSW Police who are:

- over 45 years of age and under 55 years of age at the time of early retirement;
- having at least 20 years of equivalent full-time service at the time of early retirement;
- of or below the rank of Senior Sargent for the first stage (from August 2003), and generally of or below the rank of Chief Inspector for the second and third stage (from January 2004 to August 2004);
- having a level of officer survival skills below that required for operational policing; and
- having a limited capacity to adapt or enhance skills in the use of technology.

35. 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).

36. It is noted, however, that NSW Police retains a limited right of veto to be applied to applications received from officers who possess key skills the loss of which would be detrimental to the operations of NSW Police. 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**

37. 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 subparagraph 27E(1)(b)(vi).

38. Paragraphs 14 and 15 describes the nature of the rationalisation or re-organisation of NSW Police's 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**

39. The scheme is proposed to operate for a period from 1 August 2003 to 31 August 2004. Approval will be granted prior to implementation therefore the third condition is satisfied.

40. The scheme will be in operation for approximately 13 months. This is outside the period of 12 months, recommended in paragraph 28 of TR 94/12. NSW Police has provided a detailed submission in relation to the implementation of the scheme including reasons for the time frame required and it is considered the scheme should remain open for this period to enable the desired objective to be attained.

## Other relevant information

41. 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.

42. 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):

- 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 (e.g. 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.

43. 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'.

44. 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'.

45. For the year ending 30 June 2004, the tax-free amount is limited to \$5,882 plus \$2,941 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 \$5,882 and \$2,941 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings

46. The total of the amount received on the termination of employment calculated in accordance with paragraph 19 qualifies as an approved early retirement scheme payment.

47. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 45 to determine the 'tax-free amount'.

48. 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.

49. Any payment in excess of this limit will be an ordinary ETP and split up into the pre-July 1983 and post-June 1983 (untaxed element) components. This ETP can be rolled-over.

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

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**Commissioner of Taxation**

30 July 2003

<i>Previous draft:</i>	- ITAA 1936 27E(1)(a)
Not previously issued as a draft	- ITAA 1936 27E(1)(a)(i)
	- ITAA 1936 27E(1)(a)(ii)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 27E(1)(a)(iii)
TR 92/1; TR 92/20; TR 94/12;	- ITAA 1936 27E(1)(a)(iv)
TR 97/16; CR 2001/1	- ITAA 1936 27E(1)(a)(v)
	- ITAA 1936 27E(1)(b)
<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(1)(c)
	- ITAA 1936 27E(4)
<i>Legislative references:</i>	- ITAA 1936 27E(5)
- ITAA 1936 27A(1)	- TAA 1953 PT IVAAA
- ITAA 1936 27A(19)	- Copyright Act 1968
- ITAA 1936 27CB	
- ITAA 1936 27E	

## ATO references

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