


CR 2005/110 - Income tax: Approved Early Retirement Scheme - Australian National University

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Class Ruling

Income tax: Approved Early Retirement Scheme – Australian National University

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Preamble

*The number, subject heading, **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. 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 27A, 27CB and 27E 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 the Australian National University (ANU) who receive a payment under the arrangement described in paragraphs 12 to 32.

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 32.

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

- 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
- this Ruling may be withdrawn or modified.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 7 December 2005 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

11. This Ruling is withdrawn and ceases to have effect after 30 June 2006. This 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 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 a representative of the ANU; and
- records of telephone conversations with a representative of the ANU.

13. The ANU is seeking approval for an early retirement scheme (AERS).

14. The ANU has recognised that its future success is dependent on its ability to compete for research funding and has undertaken to implement the re-organisation in order to position itself to respond to the changing nature of funding sources.

15. The aim of the re-organisation is to ensure the organisation as a whole is positioned to respond strategically to emerging research needs and ensure business areas within the organisation work together, to maximise synergies and ensure effective use of limited resources.

16. The ANU is in the process of a structural change, consolidating its current 50 business units into 7 colleges. The re-organisation will merge the academic areas, including research schools, faculties, centres and administrative units into colleges.

17. All academic areas will be required to form a component part of the college and all administrative areas within the ANU will be required to undertake a restructure to align themselves to support the new college environment.

18. This will require processes to be standardised, and a more co-ordinated approach to be adopted in relation to academic activities (research and teaching).

19. The change will result in consolidation of administrative functions and a more strategic and co-ordinated management approach, ensuring the ANU's resources can work together to source competitive grant funds.

20. In some cases this may mean moving staff out to colleges, rather than maintaining a centralised administrative function.

21. All employees, excluding senior executives in leadership positions, of the ANU on a standard appointment who are aged at least 60 as at 31 December 2005 and will not have reached age 65 as at the proposed date of retirement, will be offered early retirement under the scheme.

22. Employees will have until 31 December 2005 to accept the offer, however the number of employees who can retire under the scheme is limited by budgetary constraints.

23. If the employer receives more acceptances than can be funded, the employees who first accepted the offer will be able to retire under the scheme.

24. Employees accepting the offer will terminate employment and receive payment by no later than 30 June 2006. The actual date of termination will be negotiated between the employer and employee.

25. The payment to be made under the scheme is:

- 2 weeks salary for each year of service to a maximum of 52 weeks salary; and
- an additional amount of \$5,000 for employees who agree to and retire by 31 December 2005.

Payments made under the Scheme

26. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the conditions set out in paragraphs 27 to 32 must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

27. 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.

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

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

30. 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.

31. 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.

32. 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

33. The early retirement scheme offered by the Australian National University is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

34. 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.

35. 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

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

37. The Commissioner has issued Taxation Ruling TR 94/12 titled Income tax: approved early retirement scheme and bona fide redundancy payments, which sets out the guidelines on the application of section 27E.

38. 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:

- the scheme must be offered to all employees within a class identified by the employer (paragraph 27E(1)(a));
- 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
- the scheme must be approved by the Commissioner prior to its implementation (paragraph 27E(1)(c)).

These three conditions are discussed below.

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

39. 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).

40. The class of employees to which the scheme is proposed to be offered is set out in paragraph 21.

41. 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).

The scheme must be entered into with the view to rationalising or re-organising the operations of the employer with an identified purpose in mind

42. 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).

43. Paragraphs 16 to 20 of this Ruling describe the nature of the rationalisation or re-organisation of the ANU operations. The means by which the rationalisation or re-organisation will be implemented does not fall within any of subparagraphs 27E(1)(b)(i) to (v). However, the Commissioner has considered and approved the changes to be made to the operations of the employer or to the nature of the workforce for the purposes of subparagraph 27E(1)(b)(vi). Accordingly, the second condition for approval has been met.

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

44. The scheme is proposed to operate for a period from 7 December 2005 to 30 June 2006. Approval was granted prior to implementation, therefore the third condition is satisfied.

45. The scheme will be in operation for approximately 7 months which is within the period recommended in TR 94/12.

Other relevant information

46. 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.

47. It should be noted that, in order for a payment to qualify as an approved early retirement scheme, 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 (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 employ the taxpayer after the date of termination.

48. 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 proceeding'.

49. 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'.

50. For the year ending 30 June 2006, the tax-free amount is limited to \$6,491 plus \$3,246 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.

51. The total of the amount received on the termination of employment calculated in accordance with paragraph 25 qualifies as an approved early retirement scheme payment.

52. 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'.

53. 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.

54. 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.

Detailed contents list

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

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Commissioner of Taxation

7 December 2005

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Not previously issued as a draft

*Related Rulings/Determinations:*CR 2001/1; TR 92/1; TR 92/20;
TR 94/12; TR 97/16; TD 2005/21*Subject references:*

- approved early retirement scheme payments
- eligible termination payments
- eligible termination payments components

Legislative references:

- TAA 1953 Pt IVA
- Copyright Act 1968
- ITAA 1936 27A
- ITAA 1936 27A(1)
- ITAA 1936 27A(19)

- ITAA 1936 27CB
- ITAA 1936 27E
- ITAA 1936 27E(1)(a)
- 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)
- 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(1)(c)
- ITAA 1936 27E(4)
- ITAA 1936 27E(5)

ATO references

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