

CR 2006/40 - Income tax: Approved Early Retirement Scheme - Box Hill Institute of TAFE - Centre for Media, Design and Arts



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This document has changed over time. This is a consolidated version of the ruling which was published on *17 May 2006*



Class Ruling

Income tax: Approved Early Retirement Scheme – Box Hill Institute of TAFE – Centre for Media, Design and Arts

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① This Ruling provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for entities 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.

Relevant provision(s)

3. The relevant provisions dealt with in this Ruling are:

- section 27A of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 27CB of the ITAA 1936; and
- section 27E of the ITAA 1936.

Class of entities

4. The class of entities to which this Ruling applies is all full-time or part-time teaching staff employed at the Box Hill Institute of TAFE (the Institute) within the Centre for Media, Design and Arts who receive a payment under the scheme described in paragraphs 15 to 35 of this Ruling.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 35 of this Ruling.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme 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 17 May 2006. However, the 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 the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

14. This Ruling is withdrawn and ceases to have effect after 30 June 2006. The Ruling continues to apply, in respect of the relevant taxation provisions ruled upon, to all entities within the specified class who enter into the specified scheme during the term of the Ruling. Thus, the Ruling continues to apply to those entities, even following its withdrawal, for schemes entered into prior to withdrawal of the Ruling. This is subject to there being no change in the scheme or in the entities' involvement in the scheme.

Scheme

15. The scheme 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 scheme are:

- correspondence from representatives of the Institute; and
- records of telephone conversation with the representatives of the Institute.

16. The Institute is requesting an approval for an early retirement scheme known as a Voluntary Departure Package (VDP) relating specifically to staff employed within the Centre for Media, Design and Arts.

17. The class of employees to be offered a package will be all full-time or part-time teaching staff employed at the Institute within the Centre for Media, Design and Arts. Those staff will have taught wholly or partly in at least one of the following courses targeting the Art and Design and Entertainment Sectors of the Cultural and Recreation Industry in 2005 or 2006:

- Certificate IV Broadcasting (Television);
- Diploma of Arts (Ceramics);
- Diploma of Arts (Furniture Design); and
- Diploma of Arts (Visual Arts).

18. The purpose of the scheme is one of a number of strategies the Institute is required, under its Performance Agreement with the Victorian Learning and Employment Skills Commission (VLESC) for the period 2006-2008, to reduce delivery in low priority industries as identified by VLESC. The low priority industries are:

- Cultural & Recreation; and
- Tourism & Hospitality.

19. The reduction in delivery in low priority industry sectors will be used to increase delivery commencing in 2006 in other industry sectors. Due to the different skill sets required in the different industry sectors it is not possible to redeploy all affected staff.

20. The scheme will be implemented by the cessation or reduction in the teaching delivery output in the following sectors of the following low priority industries:

Cultural & Recreation Industry:

- Arts & Design Sector;
- Recreation Sector; and
- Entertainment Sector.

Tourism & Hospitality Industry:

- Tourism Sector; and
- Hospitality Sector.

21. The number of employees the employer is prepared to allow to retire under the scheme will be limited.

22. All eligible staff will be asked to consider taking a VDP through an expression of interest process.

23. Where more employees express an interest than the number of VDP payments available under the scheme, the package will be offered to those employees who are the oldest and under the age of 65 years at the time the payment is made.

24. The period of the scheme will be open to employees is from 17 May 2006 to 30 June 2006.

25. Once an offer is made by the Institute, the eligible employee will have 5 business days from the date the offer is made, to register their acceptance.

26. If the offer is accepted, the employment may be terminated 5 business days from the date the offer is accepted. However, the VDP offers may be staggered as various stages of the re-organisation take place and to meet transitional needs in relation to staffing levels.

27. All employees who retire under the scheme will terminate employment and receive the VDP payment before 30 June 2006.

28. The VDP payments under the approved early retirement scheme are:

- 4 weeks pay; and
- 2 weeks pay per year of continuous service to a maximum of 15 years (30 weeks pay); plus
- a lump sum voluntary departure incentive of up to \$10,000 (depending on current time fraction).

Payments made under the Scheme

29. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme, the conditions set out in paragraphs 30 to 35 of this Ruling must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

30. 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.

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

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

33. 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.

34. 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.

35. 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

36. The early retirement scheme known as a VDP offered by the Institute to eligible staff employed at the Centre for Media, Design and Arts is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

37. 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.

38. 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.

Commissioner of Taxation

17 May 2006

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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

40. The Commissioner has issued Taxation Ruling TR 94/12 Income tax: approved early retirement scheme and bona fide redundancy payments, which sets out guidelines on the application of section 27E of the ITAA 1936.

41. Paragraph 14 of TR 94/12 states that:

Three conditions must 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 in paragraphs 42 to 49 of this Ruling.

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

42. 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) of the ITAA 1936.

43. The class of employees to whom early retirement will be offered is set out in paragraph 17 of this Ruling.

44. This class of employees does not come within any of subparagraphs 27E(1)(a)(i) to (iv) of the ITAA 1936, therefore it must be considered under subparagraph 27E(1)(a)(v) of the ITAA 1936, 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) of the ITAA 1936.

45. It is noted, however, that the Institute retains a limited right of veto to be applied as set out in paragraphs 21 to 23 of this Ruling. The limitation of the scheme in this way is acceptable to the Commissioner.

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

46. 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) of the ITAA 1936.

47. Paragraphs 18 to 20 of this Ruling describe the nature of the rationalisation or re-organising the Institute's operations. In approving the scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of the employer. It is therefore considered that the scheme is to be implemented by the employer with the view to rationalising or re-organising the operations of the employer for the purposes of subparagraph 27E(1)(b)(vi) of the ITAA 1936. Accordingly, the second condition for approval has been met.

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

48. The scheme is proposed to operate for a period from 17 May 2006 to 30 June 2006. Approval was granted prior to implementation therefore the third condition in paragraph 27E(1)(c) of the ITAA 1936 is satisfied.

49. The scheme will be in operation for approximately 2 months which is within the period recommended in TR 94/12.

Other relevant information

50. Under section 27E of the ITAA 1936, 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.

51. 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 employ the taxpayer after the date of termination.

52. The term 'agreement' is defined in subsection 27A(1) of the ITAA 1936 as meaning 'any agreement, scheme or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings'.

53. 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'.

54. 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.

55. The total of the amount received on the termination of employment calculated in accordance with paragraph 28 of this Ruling qualifies as an approved early retirement scheme payment.

56. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 54 of this Ruling to determine the 'tax-free amount'.

57. 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.

58. 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.

Appendix 2 – Detailed contents list

59. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 94/12

Subject references:

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

Legislative references:

- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- 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)
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- ITAA 1936 27E(1)(a)(v)
- ITAA 1936 27E(1)(b)
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- ITAA 1936 27E(1)(b)(ii)
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- 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)
- Copyright Act 1968

ATO references

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