



CR 2006/64 - Income tax: Approved Early Retirement Scheme - Office of Government ICT

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Class Ruling

Income tax: Approved Early Retirement Scheme – Office of Government ICT

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ⓘ This publication 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 payment 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 those employees of the Office of Government ICT who receive a payment under the scheme described in paragraphs 15 to 31 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 31 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 after 19 July 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 31 October 2006. The Ruling continues to apply, in respect of the relevant 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 Office of Government ICT; and
- records of telephone conversations with representatives of the Office of Government ICT.

16. The Office of Government ICT is seeking approval for an early retirement scheme.

17. The scheme will be open to all employees in the Office of Government ICT excluding senior executive service (SES) officers.

18. The Office of Government ICT is responsible for the provision of strategic leadership, direction and support for government information and communication technology initiatives including providing advice and training for agencies on best practice ICT strategy, planning and architecture.

19. The current skills capability of the Office of Government ICT does not match its current and future direction. The Office of Government ICT's current mix of skills is disproportionately operational in nature while the future direction of the Office of Government ICT requires a greater level of strategic and policy orientated skills capability.

20. The current mix of skills in the Office of Government ICT include ICT Technical (for example software and applications development and internet development), and electrical/telecommunications technical engineers. It also includes low level administration staff where the percentage of staff is too high compared to total staff. However, the future skill requirements of the Office of Government ICT include ICT strategists, ICT Business Analysts, ICT Enterprise Architects, telecommunication analysts and strategists and ICT whole-of-government contract/account managers. The early retirement scheme will assist the Office of Government ICT in improving the alignment between skill sets and identified service delivery priorities.

21. It is noted, however, that the Office of Government ICT retains a limited right of veto to be applied if more employees accept the offer to retire than the number of early retirement packages available. The veto will be based on employees having the longest period of service being able to retire.

22. All employees who retire under the scheme will terminate employment and receive the payment on a date determined by the employer based on their operational requirements but no later than 31 October 2006.

23. The payments to be made under the scheme are as follows:

- (a) A severance benefit of two weeks' pay per year of service and a proportionate amount for an incomplete year of eligible service paid at the employees' substantive appointed level (minimum four weeks, maximum 52 weeks); and
- (b) An incentive payment to encourage employees to exit the department or agency on or by a specified date. The incentive payment is \$6,500 or 8 weeks' pay, at the employees' substantive level, whichever is the greater.

24. The scheme includes an alternative option for payment whereby employees may choose to take the severance benefit in the form of a one-off payment of \$30,000 in lieu of the payment to be made under paragraphs 23(a) and (b) of this Ruling.

Payments made under the Scheme

25. 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 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.

26. 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.

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

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

29. 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.

30. 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.

31. 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

32. The early retirement scheme to be implemented by the Office of Government ICT is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

33. 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.

34. 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.

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.*

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

36. 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 of the ITAA 1936.

37. 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:

- (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)).

These three conditions are discussed below.

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

38. 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.

39. The class of employees to which the scheme is proposed to be offered is all employees in the Office of Government ICT excluding senior executive service (SES) officers.

40. 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).

41. It is noted, however, that the Office of Government ICT retains a limited right of veto to be applied if more employees accept the offer to retire than the number of early retirement packages available. The veto will be based on employees having the longest period of service being able to retire.

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

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 19 and 20 describe the nature of the rationalisation or re-organisation of 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 a view to rationalising or re-organising the operations of the employer for the purposes of subparagraph 27E(1)(b)(vi).

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

44. The scheme is proposed to operate for a period after 19 July 2006 to 31 October 2006. Approval was granted prior to implementation therefore the third condition is satisfied.

45. The scheme will be in operation for less than 4 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 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 (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 proceedings'.

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 2007 the tax-free amount is limited to \$6,783 plus \$3,392 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 \$6,783 and \$3,392 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

51. The total of the amount received on the termination of employment calculated in accordance with paragraphs 23 to 24 of this Ruling qualifies as an approved early retirement scheme payment.

52. The total of the payment 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 83 and post-June 83 (untaxed element) components. This ETP can be rolled-over.

Appendix 2 – Detailed contents list

55. 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)
- 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)
- Copyright Act 1968

ATO references

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